

No. 15039

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United States  
Court of Appeals  
for the Ninth Circuit

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CARL C. LEE,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division

FILED

APR 24 1956

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.-4-13-56

PAUL P. O'BRIEN, CLERK

# Chapter 1

The first chapter of the book is titled "Introduction". It discusses the importance of understanding the basics of the subject and provides a brief overview of the topics covered in the subsequent chapters.

1.1

1.1.1

1.1.2

1.1.3

1.1.4

1.1.5

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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United States Post Office Building,  
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Attorneys for Plaintiff and Appellee.

PHILLIPS, AVAKIAN AND JOHNSTON,

J. RICHARD JOHNSTON,

Financial Building,  
Oakland, California,

Attorneys for Defendant and Appellant.





In the United States District Court for the Northern  
District of California, Southern Division

Criminal No. 34698

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL C. LEE,

Defendant.

INDICTMENT

(Violation: 26 U.S.C., Section 145(b)—  
Evasion of Income Tax)

The grand jury charges:

That on or about the 15th day of March, 1951, in the Northern District of California, Carl C. Lee, late of Sacramento, California, who during the calendar year 1950 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of California, at San Francisco, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of \$9,927.09 and that the amount of tax due and owing thereon was the sum of \$1,282.00, whereas, as he then and there well knew, their joint net income for the said calendar

year was the sum of \$69,162.69, upon which said net income there was owing to the United States of America an income tax of \$27,564.42.

In violation of Section 145(b), Internal Revenue Code; 26 U.S.C., Section 145(b).

A True Bill.

/s/ PAUL BURMAN,  
Foreman.

/s/ LLOYD H. BURKE,  
United States Attorney.

Approved as to Form:

/s/ JOHN LOCKLEY.

Penalty: 5 years and/or \$10,000.

Bail: \$2500.00.

Presented in open court and ordered.

[Endorsed]: Filed September 14, 1955.

/s/ GOODMAN,  
Judge.

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[Title of District Court and Cause.]

### VERDICT

We, the Jury Find Carl C. Lee, the Defendant at the Bar: Guilty as Charged in the Indictment.

/s/ EMIL L. ANDERSON,  
Foreman.

[Endorsed]: Filed December 14, 1955.

United States District Court for the Northern  
District of California, Southern Division

No. 34698

UNITED STATES OF AMERICA

vs.

CARL C. LEE

JUDGMENT AND COMMITMENT

On this 11th day of January, 1956, came the attorney for the government and the defendant appeared in person and with counsel.

It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violation of Title 26, United States Code, Section 145(b)—Evasion of Income Tax—(Defendant Carl C. Lee, late of Sacramento, California, did, on or about March, 15, 1951, in the Northern District of California, wilfully and knowingly attempt to evade and defeat a large part of income tax due and owing by him and his wife to the United States of America for calendar year 1950, by filing and causing to be filed with Collector of Internal Revenue for First Internal Revenue Collection District of California, at San Francisco, a false and fraudulent joint income tax return on behalf of himself and his said wife for said calendar year), as charged in the indictment (single count); and the court having asked the defendant whether he has anything to say why judg-

ment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years and pay a fine in sum of Ten Thousand Dollars (\$10,000) to the United States of America.

It Is Adjudged that defendant pay costs of prosecution herein.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ GEORGE B. HARRIS,

United States District Judge.

Examined by:

/s/ JOHN LOCKLEY,

Assistant U. S. Attorney.

The Court recommends commitment to: An institution to be designated by U. S. Attorney General.

[Endorsed]: Filed January 12, 1956.

Entered January 13, 1956.

[Title of District Court and Cause.]

DEFENDANT'S REQUESTED  
INSTRUCTIONS

\* \* \*

No. 18

There is only one state of mind that will supply the intent necessary to warrant a conviction in this case, and that is the intent to defeat or evade the tax due. Filing a false return with any other bad purpose would not supply the necessary intent. Nor would filing a false return without a justifiable excuse, or without ground for believing it to be lawful, or with a careless disregard for whether or not one has the right so to do, constitute, in themselves, the intent which is required by the law. You may find the defendant guilty in this case only if you find that he knowingly filed a false return with the intention of evading or defeating the tax due.

Block v. United States

(1955, C.A. 9) 221 F. 2d 786, rehearing  
denied June 14, 1955, 223 F. 2d 297.

.....,

United States District Judge.

Given: .....

Refused: .....

Covered: .....

No. 27

The defendant is charged with wilfully attempting to evade and defeat his income taxes and those of his wife for the calendar year 1950, an offense which is a felony. If you are not convinced that the defendant is guilty of this offense, but you are convinced beyond a reasonable doubt that he wilfully failed to pay his correct income tax for the year 1950, you may find him guilty of this lesser offense, which is a misdemeanor.

Section 145(a), Internal Revenue Code of 1939.

.....,

United States District Judge.

Given: .....

Refused: .....

Covered: .....

Dated: December 14, 1955.

/s/ GEORGE B. HARRIS,  
U. S. District Judge.

[Endorsed]: Filed December 16, 1955.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

The defendant named above hereby appeals from the judgment of the above-entitled Court rendered in the above-entitled matter on the 11th day of January, 1956, and respectfully states as follows:



(1) Appellant's name and address are as follows:

Carl C. Lee,  
4700 Capital Drive,  
Sacramento, California.

(2) The names and addresses of appellant's attorneys are as follows:

Fred Pierce,  
1023 H Street.  
Sacramento, California.

J. Richard Johnston,  
Financial Center Building,  
Oakland 12, California,  
Telephone: GLencourt 2-2133.

(3) The offense of which appellant was convicted is an attempt to evade and defeat income tax for the year 1950 in violation of Section 145(b) of the Internal Revenue Code. The indictment alleged that defendant attempted to evade tax in the amount of \$26,282.42.

(4) The judgment of the Court was that defendant be fined \$10,000.00, plus the costs of the action, and that he be confined in an institution designated by the Attorney General for a period of five years. Judgment was rendered on January 11, 1956.

(5) Appellant is now confined in San Francisco County Jail No. 1 in the City of San Francisco, California.

(6) Appellant appeals from said judgment to

the United States Court of Appeals for the Ninth Circuit.

Dated this 12th day of January, 1956.

FRED PIERCE,

J. RICHARD JOHNSTON,

By /s/ J. RICHARD JOHNSTON,  
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed January 12, 1956.

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[Title of District Court and Cause.]

### BILL OF COSTS

Judgment having been entered in the above-entitled action on the 11th day of January, 1956, against Carl Chong Lee, aka Lee Sere Chong, the clerk is requested to tax the following as costs:

Fees of the clerk.....\$ 15.00

Fees of the marshal

(Title 28 U.S. Code, §1921)..... 100.00

\*Fees of the court reporter for all or any  
part of the transcript necessarily ob-  
tained for use in the case..... 434.40

Fees for witnesses..... 418.10

(Itemized on reverse side)

Docket fees under 28 U.S.C. 1923..... 20.00

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Total .....\$987.50

\*To Kenneth J. Peck, Official Reporter, 345 Post Office Bldg., San Francisco, Calif., December 5 through 12, 1955.



Costs taxed in sum of \$987.50.

1/17/56 at 10:30 a.m.

/s/ C. W. CALBREATH,  
Clerk.

State of California,  
City & County of San Francisco—ss.

I, John Lockley, do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to J. Richard Johnston, Financial Center Bldg., Fourteenth at Franklin, Oakland, California, with postage fully prepaid thereon.

Please take notice that I will appear before the Clerk to tax said costs on the 17th day of January, 1956, at 10:00 a.m.

/s/ JOHN LOCKLEY,  
Assistant U. S. Attorney,  
Attorney for Plaintiff.

Subscribed and sworn to before me this 13th day of January, A.D. 1956, at San Francisco, California.

[Seal] /s/ WM. J. FLINN,  
Deputy Clerk, United States District Court, Northern District of California.

[Endorsed]: Filed January 13, 1956.

[Title of District Court and Cause.]

OBJECTIONS TO PLAINTIFF'S BILL  
OF COSTS

Defendant objects to the following item on the grounds stated below, in the Bill of Costs filed herein by plaintiff on January 13, 1956:

Fees of the Court Reporter.....\$434.40

This represents the cost of a copy of a daily transcript purchased by plaintiff for its own use and convenience, which is not taxable against defendant.

Respectfully Submitted,

J. RICHARD JOHNSTON,  
FRED PIERCE,

By /s/ J. RICHARD JOHNSTON,  
Attorneys for Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF DEFENDANT'S  
OBJECTION TO PLAINTIFF'S BILL OF  
COSTS

The cost of a daily transcript purchased for the use and convenience of plaintiff (as distinguished from a transcript ordered by the court for its use) is not taxable to defendant.

Stallo v. Wagner

(C.A. 2, 1917) 245 Fed. 636

Atwood v. Jacques  
(C.C. 1894) 63 Fed. 561

Vort v. McGrath  
(D.C. D.C. 1951) 108 F. Supp. 263, 264.

See also Kenyon v. Automatic Instrument  
Co. (D.C. W.D. Mich. 1950) 10 F.R.D. 248,  
254; Donato v. Parker Pen Co. (D.C. S.D.  
N.Y. 1945) 7 F.R.D. 148; Hope Basket Co.  
v. Product Advancement Corp. (D.C. W.D.  
Mich. 1952) 104 F. Supp. 444, 450.

Respectfully Submitted,

J. RICHARD JOHNSTON,  
FRED PIERCE,

By /s/ J. RICHARD JOHNSTON,  
Attorneys for Defendant.

Service of copy acknowledged.

[Endorsed]: Filed January 19, 1956.

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[Title of District Court and Cause.]

ORDER SUSTAINING ALLOWANCE OF  
COST OF TRANSCRIPT

Defendant has appealed from the ruling of the  
Clerk of the Court allowing as an item of cost a  
transcript obtained by the Government for its use  
during the trial.

28 U.S.C.A. 1920 (2) provides that a Court may  
tax as costs "fees of the court reporter for all or  
any part of the stenographic transcript necessarily  
obtained for use in the case; \* \* \*"

The Court finds that the stenographic transcript was necessarily obtained by counsel for plaintiff for use in the trial of the case.

Accordingly, it is ordered that defendant's objection to allowance of cost in the amount of \$434.40 for the transcript be, and the same hereby is, overruled and the item is allowed.

Dated: January 26, 1956.

GEORGE B. HARRIS,  
United States District Judge.

[Endorsed]: Filed January 26, 1956.

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

The defendant named above hereby appeals from the judgment of the above-entitled Court rendered in the above-entitled matter on the 11th day of January, 1956, and respectfully states as follows:

(1) Appellant's name and address are as follows:

Carl C. Lee,  
4700 Capital Drive,  
Sacramento, California.

(2) The names and addresses of appellant's attorneys are as follows:

Fred Pierce,  
1023 H Street,  
Sacramento, California.

J. Richard Johnston,  
Financial Center Building,  
Oakland 12, California,  
Telephone: GLencourt 2-2133.

(3) The offense of which appellant was convicted is an attempt to evade and defeat income tax for the year 1950 in violation of Section 145(b) of the Internal Revenue Code. The indictment alleged that defendant attempted to evade tax in the amount of \$26,282.42.

(4) On January 26, 1956, the Court made its order sustaining the allowance, as an item of cost taxed against the defendant, of the cost of a daily copy of the reporter's transcript obtained by the Government for its use during the trial.

(5) Appellant is now at liberty on bail in the amount of \$10,000.00 pending appeal.

(6) Appellant appeals from said order to the United States Court of Appeals for the Ninth Circuit.

Dated this 2nd day of February, 1956.

FRED PIERCE,

J. RICHARD JOHNSTON,

By /s/ J. RICHARD JOHNSTON,  
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed February 3, 1956.

In the United States District Court for the North-  
ern District of California, Southern Division

No. 34698

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL C. LEE,

Defendant.

Before: Hon. George B. Harris, Judge.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Monday, December 5, 1955

Appearances:

For the United States:

LLOYD H. BURKE, ESQ.,

United States Attorney, by

JOHN LOCKLEY, ESQ.,

Assistant United States Attorney.

For the Defendant:

PHILLIPS, AVAKIAN &

JOHNSTON, by

J. RICHARD JOHNSTON, ESQ., and

FRED PIERCE, ESQ.

\* \* \*



DARROLD D. DeCOE

called as a witness on behalf of the Government,  
sworn:

The Clerk: Please state your name, your address  
and your occupation to the Court and to the jury.

A. Donald D. DeCoe, Jr. My address is 1000  
Casa Lotta Way, Sacramento.

Q. And your occupation?

A. My occupation is Deputy Sheriff of Sacra-  
mento County.

Direct Examination

By Mr. Lockley:

\* \* \*

Q. I show you Exhibit 1, in evidence, and ask  
you if you can identify that document?

A. Yes, I can.

Q. And what is it?

A. This is the income tax return of Carl C.  
and Lily Lee for the year 1950. [22\*]

Q. I call your attention to the signature in the  
lower left hand corner, "Signature of person other  
than taxpayer preparing this return." Whose sig-  
nature is that? A. That is my signature.

Q. And you signed that? A. I did, sir.

Q. Did you also prepare the typewritten portion  
of this income tax return? A. I did.

Q. Now, calling your attention to page 4 of the  
return, Schedule C, entitled "Schedule of Profit or  
Loss from business or profession," on the line 1,

---

\*Page numbering appearing at top of page of original Reporter's  
Transcript of Record.

(Testimony of Darrold D. DeCoe.)

“Total receipts from business or profession \$15,887.75,” did you insert that figure?      A. I did.

Q. Can you tell me where you obtained the information for that?

A. From a financial statement or memorandum of receipts and disbursements furnished by Dr. Lee.

Q. Do you know where that financial statement is today?      A. I do not.

Q. Now, did you have any conversation with Dr. Lee at the time he supplied the financial statement to you?      A. Regarding this \$15,887.75?

Q. Yes.      A. No, not about that. [23]

Q. Did you have any conversation with him at any time prior thereto regarding his gross receipts?

A. Well, I had a conversation with him, Mr. Lockley, prior to this form. I don't know whether it was about receipts or disbursements, however.

I know that the first returns that we prepared that year, the tax was greater, and Dr. Lee was sure that we had made an error and he went back and reviewed his figures and brought in a new sheet to work from.

Q. You prepared two returns, then, for him in that year?      A. I did.

Q. Now, do you have any recollection as to how much was reported in gross receipts for the first return that you prepared?

A. I have no recollection of the amount.

Q. Do you have any recollection as to what was claimed as cost of goods sold or other business deductions on the first return that you prepared?



(Testimony of Darrold D. DeCoe.)

A. I have no recollection of the amount.

Q. Do you have any recollection as to the amount of tax which was due and owing on the first return you prepared?

A. The only recollection I have is that it was in excess of the amount that shows on this return I have in my hand. I don't know just exactly how much in excess it was.

Q. Do you recall, was there anyone else present at the [24] time you had a conversation with Dr. Lee regarding the preparation of the first return?

A. I don't recall now, other than my father may have been there.

Q. Do you remember where the conversation was?           A. No, I don't.

Q. Do you remember about when?

A. Well, it would be the early part of 1951, prior to March 14th when this one was dated.

Q. As best you can recall, will you tell us what the substance of that meeting was, what the conversation was?

A. Well, I can't recall the exact conversation, but I took the financial statement or memorandum of receipts and disbursements as furnished our office, given to my father, and I put them into a 1040 and 1040C, I believe it is, and when I completed it I showed it to my father and he, together with me, said, "Carl isn't going to like this. He has a lot of tax to pay."

Then when Dr. Lee saw it he thought that it was in error. I should say, he thought it was in error,

(Testimony of Darrold D. DeCoe.)

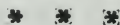
and at that time, why, he brought us in a new schedule to work his tax from. In other words, he went out and reviewed his books, evidently.

Q. And you don't know whether he gave you a schedule with larger income or greater [25] expenses?

A. No, I don't recall at all just how the other one differed in receipts and disbursements. All I remember is that the tax was greater in the first one that we prepared.

Q. I also note on page 1 of the return is a stamp under which it says, "This return based on information submitted by taxpayer without verification," and "Darald D. DeCoe." Is that—what is the significance of that stamp, Mr. DeCoe?

A. We place that stamp on every return that we did inasmuch as our office conducted no audit of the taxpayers. In other words, we accepted their figures, explained to them just what would be deductible and what wouldn't be, and told them they were the ones that would have to verify to the Collector of Internal Revenue any discrepancies. [26]



MORTON D. HARMON

called as a witness on behalf of the Government;  
sworn.

The Clerk: Please state your name, your address and your occupation to the Court and jury.

A. Morton D. Harmon, 9645 Hilltop Row, Bellevue, Washington. [50]

The Clerk: And your occupation?

A. Vice-President, Walston & Co.

Direct Examination

By Mr. Lockley:

Q. In what business does Walston & Co. engage, Mr. Harmon?

A. Members of the New York Stock Exchange.

Q. And you are a vice-president of that organization?

A. Yes, sir.

Q. Prior to the time you became a vice-president had you had any other position in the company?

A. Yes. I was a resident partner.

Q. Did you at some time reside in California?

A. Yes, sir.

Q. Where? A. Modesto, California.

Q. And were you living in that city during the year 1950?

A. Yes, sir.

Q. Now do you know the defendant, Carl C. Lee?

A. Yes, sir.

Q. Do you recall approximately when you first met him?

A. About the first part part of 1949.

Q. And in what connection did you meet him?

(Testimony of Morton D. Harmon.)

A. Through a friend of mine.

Q. For what purpose? Was it social, business or otherwise?      A. For medication. [51]

Q. For medication. Has he ever been a client of yours, as a stockbroker?      A. No, sir.

Q. Where did you go—see Mr. Lee when you first met him?

A. At his place of business. I believe it was 522 “J”-Street, Sacramento. I believe that was the address.

Mr. Lockley: I think that counsel stipulate it was 512.

Mr. Johnston: That is correct.

Q. (By Mr. Lockley): Just for the sake of the record, 512 “J” Street, does that sound right?

A. Yes, sir.

Q. Now, did you have anything wrong with you physically, Mr. Harmon?      A. No.

Q. Your purpose in going to see Dr. Lee, then, was more in the nature of insurance?

Mr. Johnston: Objected to.

Q. (By Mr. Lockley): What was your purpose in going to see him?

A. My purpose in going to see Dr. Lee was to build up my body in the form of health.

Q. But there was nothing physically wrong with you that you know of at the time?

A. If you mean there was anything wrong with me, I had no chronic ailment, no. [52]

Q. Now what arrangements did you have with

(Testimony of Morton D. Harmon.)

Dr. Lee during the year 1950 for the payment of medical services that he rendered to you?

Mr. Johnston: Objected to, if the Court please, on the ground it assumes facts not in evidence. There is no record of medical service.

Q. (By Mr. Lockley): Did he give you medical service in 1950? A. Yes, sir.

Q. Did you have some arrangement whereby you were to pay him for those services? A. Yes.

Q. What arrangements were they?

A. I paid him by check for part of his services and I paid him cash for part of his services.

Q. Did Mr. Lee ever send you a bill?

A. No, sir.

Q. Now how did you know how much you owed him? A. By mutual agreement. [53]

\* \* \*

Q. Now in addition to these two checks for \$100 each in 1950, did you make any other payments to Dr. Lee?

A. According to my records I made a payment to Dr. Lee on April 17th, 1950, the sum of \$110.

Q. And how was that payment made?

A. In cash.

Q. And was there any particular reason for making it in cash other than by check?

A. You mean was it my choice?

Q. Why did you pay it in currency?

A. I was requested to.

Q. By whom? [59] A. Dr. Lee.



(Testimony of Morton D. Harmon.)

Q. Do you remember when he made that request of you?      A. When he made it?

Q. Yes.

A. At the time I received the medication, as was his practice, I did not pay him at the time that I was there. I generally would mail him the check.

Q. And in this instance you paid him in currency?      A. In cash, in currency.

Q. Do you recall if you mailed this currency to him or handed it to him personally?

A. Mr. Lockley, I cannot.

Q. And for what purpose was the \$110 in currency paid?      A. Same thing, for medication.

Q. In addition to this \$110, then, did you make any other payments to Dr. Lee in 1950?

A. August 11th, 1950.

Q. And how much then?      A. \$220.

Q. And how was that paid?      A. In cash.

Q. Was there any reason for making the payment in currency?

A. The same reason as before.

Q. That is, Dr. Lee asked you to make it in currency?      A. That is correct. [60]

Q. Now I note that the payment increases from \$100 in February to \$110 in April. Do you know why that increase was made?

A. As Dr. Lee explained to me, at times the prices of his medication was different because his source of supply wasn't always at the same [61] price.

R. F. FRASER

called as a witness on behalf of the Government,  
sworn.

The Clerk: Please state your name, your address and your occupation to the Court and to the jury.

A. R. F. Fraser, Stockton, California.

The Clerk: And your occupation?

A. Retired right at the present time.

Direct Examination

By Mr. Lockley:

Q. What was your occupation in 1950, Mr. Fraser?

A. Well, I was more or less active at that time in the heating and air-conditioning of one of the branches of the business that I have up there.

Q. What was the name of the company?

A. Fraser Sales & Service Company.

Q. And you were the president and manager of that company?

A. Prior to 1950 I was. About 1946 or '7 I turned the [75] management over to one of the men, junior members of the organization.

Q. Do you know the defendant, Carl C. Lee?

A. Yes, I do.

Q. Do you recall the approximate date when you first met him?

A. I couldn't call the approximate date. I could tell you the approximate time of year it was.

Q. When was that?

(Testimony of R. F. Fraser.)

A. It was the middle of 1950, I would say, maybe in June.

Q. And what were the circumstances of that first meeting?

A. The circumstances leading up to the meeting with Dr. Lee, did you say? Is that your question?

Q. No. Why did you go to see him if you did?

A. I went to see Dr. Lee through a friend of mine.

Q. For what purpose?

A. For medication.

Q. Did he diagnose your physical condition or give you any physical examination at the time you first saw him?

A. Well, the first physical examination he gave was taking your blood pressure and asking for a sample of urine to have it analyzed. That is the total of the examination, as I recall it.

Q. Did you thereafter retain Dr. Lee for professional services? [76]

A. I believe about a week or so after he took the sample of urine I went back up there again on appointment, and at that time he started me out on what he called tea—bottles he called tea.

Q. Do you know what was in the bottles of tea?

A. I have no idea.

Q. It was a liquid medicine of some sort?

A. Liquid medicine, that is right.

Q. How often were you to take this medicine?

A. Well, I used to get enough—he gave me, I think, about three quarts or—no, they are probably



(Testimony of R. F. Fraser.)

pints, pint bottles, and they would last me, I would say, approximately two weeks or in that neighborhood.

Q. How often did you go to see Dr. Lee, if you can recall, during the year 1950 for professional services?

A. Well, while I was taking that particular type of medicine or medication I would say I would go up there about every two weeks.

Q. Did you have any arrangement with Dr. Lee at the outset as to how much money you were to pay him for his services? A. No.

Q. Did he ever send you a bill letting you know how much you owed him?

A. Never. No bills. [77]

Q. Did you ever have any discussion with him, then, as to how much you would pay him at the beginning of the period when you retained him?

A. At the beginning there was no discussion of any over-all cost, no.

Q. Well, did you pay him some money?

A. I paid him some money at the beginning, yes.

Q. How did you know how much to pay him?

A. He would have a set fee for the tea that I took with me, \$30 or \$40 or whatever it was, and I would pay him for that at that time.

Q. Was that the situation during the year 1950?

A. I would say the beginning part of the year, yes—or the latter part of the year, rather, not the whole year.

(Testimony of R. F. Fraser.)

Q. How did you pay Dr. Lee for the herbs that you took with you?

A. Well, I would go up there and pick up the herbs occasionally and I would not pay him. I would maybe let it go until the following visit after that, so therefore in order to pay the \$35 or \$40, whatever the amount was, I would give him a check at that time, maybe for three batches of these herbs that he gave me.

Q. So the amount you paid him would vary from time to time?

A. That would vary from time to time, yes, sir.

Q. Do you know how much it was costing you per week? [78]

A. Well, offhanded I would say I can't recall, but I would say maybe \$35 a week or \$40, something like that.

Q. Did you have any later arrangement with Dr. Lee whereby you paid him for a different kind of medicine?

A. Well, yes, I did.

Q. When did that arrangement come about?

A. Oh, I would say probably a month or six weeks or so after I started taking the tea.

Q. Did you have any conversation with him at that time?

A. Well, prior to that time I was told—if I can inject this in here?

Q. By whom were you told?

A. Mr. Phelps in Sacramento.

Mr. Johnston: I object to that as hearsay.

Q. (By Mr. Lockley): Just confine yourself to

(Testimony of R. F. Fraser.)

what the defendant, Dr. Lee himself, told you. Did he say anything to you about any different course of treatment than this \$35-a-week course you were taking?

A. He said later he would start me on a different type of medicine and it was real expensive.

Q. Did he say what type of medicine that was?

A. He never named the medicine. He said it was an herb from China that was smuggled into the country.

The Court: What was that again?

A. An herb from China. [79]

Q. (By Mr. Lockley): Did he say how much that would cost?

A. No, he didn't tell me how much that would cost until such time as we—in other words, the cost, the discussion of cost was led up to over a period of several times I was down at Sacramento—paving the way.

Q. Did he eventually name a figure?

A. Yes, he named a figure and I objected to the figure because it was too high.

Q. How much was it that he named?

A. Well, he started talking about some of his clients that were paying as high as forty-five and fifty thousand dollars, and things of that sort, for this particular treatment.

Q. He told you that he had other clients that were paying him forty-five and fifty thousand dollars?

A. He said that he had other clients, yes, that

(Testimony of R. F. Fraser.)

were paying large sums of money for this same treatment.

Q. Did he ask any specific sum of money from you for this treatment?

A. Yes, he did. He had two or three quotes at the time, according to the strength of the treatment.

Q. Can you tell me what figures he did mention to you?

A. Well, the course that we finally settled on there was for \$12,500.

Q. And did you take that course of treatment?

A. I did. [80]

Q. Did you pay him the \$12,500?

A. Yes, I did.

Q. Did you have any discussion with him prior to that about any more expensive course of treatment?

A. No, outside of the fact that he had mentioned that—well, he recommended that more expensive course for me, in which I couldn't see myself clear to take.

Q. Now, was there any discussion between you as to how payment was to be made for the more expensive course of treatment?

A. Yes, when he told me what the amount of the treatment was going to cost and I told him that I would try it, he said, "I want the money in cash."

Q. Did you give him the money in cash?

A. Yes, I got them all in \$100 bills at his instructions.

(Testimony of R. F. Fraser.)

Q. He told you to get \$100?

A. That is right. [81]

\* \* \*

Q. Did he ever have any conversation with you concerning the kind of records that you were to keep of the transaction?

A. Not during the time I was visiting, no.

Q. Did you have a later discussion with him at any time?

A. Well, Dr. Lee did visit me in Stockton, yes, after the Internal Revenue started to checking up on him.

Q. And about when did Dr. Lee come to see you in Stockton?

A. I would say about a year and a half ago or something of that sort.

Q. Was anybody else present with him at that time?      A. No.

Q. Where did he visit you?

A. We were remodelling one of my buildings there, and that is where he finally caught up with me and talked to me inside the building there where the remodelling was going on.

Q. Was there anyone else within earshot who could have overheard your conversation?

A. No, because he requested we go to one side and talk.

Q. Can you tell me, not in exact words but in substance, what that conversation was?

A. Well, the first time that Dr. Lee came in



(Testimony of R. F. Fraser.)

there he wanted to know if the Internal Revenue Department had been there to see me, and I told him yes. He wanted to know what I told them, and I said that I told them the exact truth, the amount of money I gave him. He was very much disturbed to think that [88] I did it, and he wanted to know if——

Mr. Johnston: Excuse me, I am going to ask that the statement that he was very much disturbed be stricken as a conclusion of the witness.

The Court: Well, that may go out. Will you state what he said and what you said? [88A]

A. Well, he wanted to know what I had told the Internal Revenue Department, and I told him that I had shown him the cancelled checks that I had written and I told him the amount that I had paid. He wanted to know if he couldn't work out a deal whereby I would testify that I made a loan to him for this amount instead of medical treatment. I told him "No, I would not testify to anything of that sort."

Q. Did you ever make a loan to him of any sort?

A. No.

Q. Did you ever have any financial transactions with him other than those represented by these checks during 1950?           A. No.

Q. Or any other year?           A. No.

Q. And you say that this was the first time he came to see you. Did he see you on any later date?

A. He came up again to see me.

Q. And who was present at the time, if anyone?

(Testimony of R. F. Fraser.)

A. Just he. He was alone, as far as I know.

Q. And when was this?

A. I would say probably a month later, something like that.

Q. And where was the meeting?

A. In the same place.

Q. What was said at that meeting?

A. Well, it was just more or less along the same lines as [89] our first meeting.

Q. Well, can you tell us as best you can remember what was said?

A. Well, he wanted to know if I wouldn't—as I stated previously, if I wouldn't state that I had made this loan to him and that he paid me back. I told him I couldn't make no such statement as that; in the first place, I couldn't state I was making a loan without security, and in the second place, if he paid me back, where did the money go. I would have no record of where I deposited it.

The Court: I couldn't hear your last statement. You had no what?

The Witness: I told him I had no record of the money, depositing the money, if I was called upon to show, and furthermore that I wouldn't make a false statement of that sort.

Q. (By Mr. Lockley): If you know, was there any difference in the kind of herbs or treatment that you received for the checks represented by Exhibit No. 6 and the currency represented by Exhibit No. 7?

A. Yes. The checks for the tea or the herbs,

(Testimony of R. F. Fraser.)

whatever they were, was a liquid furnished in probably pint bottles. You take a cupful of that, as I remember, about three times a day. This check here was for a black substance in a little small bottle about that big. You take 40 drops a day. That was what [90] this was for here.

Q. That is what the \$12,500 was for?

A. That's right, yes.

Q. I believe you testified——

The Court: Pardon me, counsel. How many bottles did you receive for that?

A. Six months' supply.

Q. That was the course of treatment?

A. May I make a correction? That was a three months' supply, three months' supply.

Q. (By Mr. Lockley): At the conclusion of the three months did you have any discussion with Dr. Lee concerning continuing the course of treatment?

A. Yes, I was still going to him.

Q. Well, did you offer to buy or did Dr. Lee offer to sell you any more of the small bottles of the black substance after the original \$12,500 was exhausted?

A. Yes, he did.

Q. And can you tell me what conversation you had on that occasion?

A. Yes, I can. I will have to confess to one thing. I was so damned embarrassed as to admitting that I paid this kind of money that I didn't tell your men all that I spent, but I did tell counsel that I did pay that kind of money. I don't know whether that is good or bad. [91]



(Testimony of R. F. Fraser.)

Q. You mean the \$12,500 is not all of the currency that you spent with Dr. Lee?

A. Just half of it.

Q. How much additional did you pay Dr. Lee?

A. The total treatment there was \$45,000 for which I paid him practically half of that, paid him half of that. That was for the full six months of treatment.

Q. And when did you pay the balance then of the amount, about half of \$45,000?

A. Well, it's out. I can get my bank book here and tell you, which you folks haven't seen. I was wishing I wouldn't get to this point. As a matter of fact, I closed the back of this book off hoping I wouldn't have to get into it.

Mr. Johnston: If the Court please, I didn't hear that last statement.

The Court: Nor did I. Would you read it, please?

(Record read.)

The Witness: On September 29th I drew \$8000.00 in cash out of the bank; October 5th, I drew \$3500; on October 6th, I drew \$2000. That was \$13,500.

Q. (By Mr. Lockley): And that's added to the \$12,500?

A. I likewise took that up in cash, yes, in \$100.

Q. A total then of \$26,000. May I have your check stubs?

(Testimony of R. F. Fraser.)

A. You never got those checks. Those are check stubs here but you never got the checks. [92]

\* \* \*

The Court: Do you concede Dr. Lee received \$13,500?

Mr. Johnston: No, sir, we do not.

The Court: You do not?

Mr. Johnston: We don't concede he received a cent of that money.

The Court: Do you deny he received any part of the \$13,000?

Mr. Johnston: We do. And likewise the \$12,500 as to which the witness first testified.

The Court: Well, if that is your position, Mr. Johnston, It is quite evident, Mr. Fraser, the position taken by the defense in this case. They deny the receipt in whole or in part of the \$13,500, and I assume equally they will deny in whole or in part the receipt of additional sums of money.

Mr. Johnston: And also the \$12,500. [98]

\* \* \*

### Cross-Examination

By Mr. Johnston:

\* \* \*

Q. Well, just so we can be clear, Mr. Fraser, was when that happened about a week before June 24th with regard to this other kind of treatment? As I understand your testimony this morning, sir, you testified that it was about a week before June 24th

(Testimony of R. F. Fraser.)

that the subject of some other treatment was first discussed.

A. The financial end of it, yes, the cost; that was getting down to the cost.

Q. That was when the question of cost was discussed?

A. Prior to that it was talked about but no price mentioned.

Q. And your testimony was, I think, that there was some discussion about forty thousand or fifty thousand or sixty thousand dollars.

A. He kept quoting different figures, yes.

Q. And you protested that the high figures were too much, I take it?      A. That's right.

Q. What was the final result, the conclusion of that discussion?

A. Well, it would be pretty doggone hard to explain. I might state it in this fashion, that he would explain that these particular herbs that he had, whatever they were, came in different strengths and naturally he wanted me to take the stronger one which cost more money.

Q. Did he give a name to the herbs? [207]

A. No. There was a military secret. I don't know. He never mentioned that.

Q. Did he show them to you?

A. No, never saw them until I paid for them. And he wanted to sell me the year's treatment, which I wouldn't go for. I said I would take the three months' treatment and see how I felt at the end of the three months.

(Testimony of R. F. Fraser.)

Q. The year's treatment was \$45,000?

A. We had argued between forty five and sixty. We hadn't settled on it.

Q. When you finally decided to take the three month treatment——

A. I told him I wouldn't go over forty-five and that is when he gave me this first treatment here and it cost me twelve five, the fact that it was supposed to be stronger than the \$45,000 medicine, it was supposed to be.

Q. Well, that would figure at the rate of \$50,000 for a year?      A. Yes.

Q. He actually gave you or handed you some of this medicine on June 24th, did he?

A. Yes. That is the first medicine I got of that type.

Q. That is the date of this \$11,000 check, which is in evidence as Government's Exhibit 7?

A. That's right. [208]

\* \* \*

### ILA HIGH

called as a witness on behalf of the government; sworn. [312]

The Clerk: Please state your name, your address and your occupation, if any, to the Court and to the jury.

A. I am Mrs. Ila High.

The Clerk: Will you spell your name?

A. I-l-a H-i-g-h. Route 6, Box 1448½, Modesto,

(Testimony of Ila High.)

California. I am Grace A. Cavell's secretary and bookkeeper.

Direct Examination

By Mr. Lockley:

Q. How long have you been employed by Mrs. Cavell, Mrs. High?

A. Since August the 7th of 1947.

Q. And what is the nature of your duties?

A. I do everything for her. I keep her books. I keep track of all of her appointments. I take care of all of her holdings, anything pertaining to her rentals. I just do everything. I am the only employee she has.

Q. And you were so employed in 1950, is that correct?

A. Correct.

Q. Now, have you ever met the defendant Lee?

A. Yes.

Q. And where did you first meet him?

A. In his office in Sacramento.

Q. And on what day, if you remember?

A. August 7, 1950.

Q. Was anyone else present?

A. Grace A. Cavell. [313]

Q. That is your employer?

A. Correct. [314]

\* \* \*

Q. On Exhibit 24 there are some markings in pencil?

A. Yes.

Q. And what do those markings denote?

A. They denote the cash that was given to Dr.

(Testimony of Ila High.)

Lee, the [320] amounts where I got it, for my record so I would know.

Q. Now, prior to making those last payments as shown by Exhibit 24, were you present at any discussion with Dr. Lee concerning such payments?

A. Yes, I was with Mrs. Cavell at all the appointments.

Q. And at what time was that discussion, if you remember it?

A. You mean for this cash amount?

Q. Yes. What date?

A. Well, now, it would have to be on August the 28th because we were asked to bring that amount in cash, and we got the money ready to take with us when we went on September the 5th.

Q. Do you remember what the conversation was as to the purpose for which the cash payment was to be made?

A. Yes. Dr. Lee said that he was giving her herbs that were very expensive and that he did not keep this money but it would be handed to a party who brought those herbs to him. [321]

The Court: Excuse me. I could not hear the last answer.

The Witness: I am sorry.

The Court: Mr. Reporter, would you mind reading that last answer?

(Answer read.)

Q. (By Mr. Lockley): Was there any discus-



(Testimony of Ila High.)

sion as to the amount of money that Mrs. Cavell would pay him on the first occasion of August 28th?

A. Well, the only part I could recollect would be this sum. At different times different sums were mentioned, but I can't say just when.

Q. Now, how much was paid to Dr. Lee on September 5?

A. A check for \$100, which was check No. 156, and cash for \$550 was handed in currency. [322]

\* \* \*

Q. Now, was there any discussion with Dr. Lee as to how payment was to be made to him, in cash or by check?

A. Yes, he wanted the \$100 in check and he wanted the other in currency. [323]

\* \* \*

Q. And the number 993 shown on the record book, does that identify the check which you have in your hand?

A. Oh, yes, yes.

Q. Was there any reason for writing that portion of the record in pencil rather than in ink?

A. Yes. Dr. Lee had asked us not to make a record of it, and I thought when I don't put it in ink that was not a record. This was a little record for myself in pencil.

Q. And when did he make that request of you?

A. I would say on August the 28th when he asked for it. It was brought the next week on September 5th.



(Testimony of Ila High.)

Q. How did you know how much money to bring to him?

A. Because he had asked for that amount. [325]

\* \* \*

Q. (By Mr. Lockley): Was there any reason, if you know, Mrs. High, why the amount increased from \$550 on September 12th to \$1100 on September 18th?

A. As I understand it, this herb, which was expensive, had been increased slightly.

Mr. Pierce: Just a minute. We wish to interpose an objection, Your Honor, on the ground that they haven't fixed [327] the time. I don't know whether she is talking about from knowledge or hearsay.

Q. (By Mr. Lockley): Did you have any discussion in your presence with Dr. Lee concerning the increase in price? A. Yes.

Q. All right. Now, when was this discussion?

A. The \$1100 would be when we went on the 19th of August. On the 19th of August he said when we returned the next week would we bring \$1100 as he had changed the formula and it would cost more.

Q. Now, are you correct on your date, the 19th of August?

A. I mean the 12th of September, come there on the 19th. I am one ahead of you. That's right. I am sorry.

Q. When you went there on the 12th of September he asked you to bring \$1100 when you came the next week on the 19th? A. That's right.

(Testimony of Ila High.)

Q. Now, did he explain why the amount was to be increased?      A. Yes.

Q. Why was it?

A. He was using more of this same expensive herb.

Q. He was using more herbs?

A. That is right. Or a little of it. I can't say how much. I don't know. [328]

\* \* \*

Q. And for what purpose were those two checks drawn?

A. To take the currency to Dr. Lee on the 26th.

Q. Were they cashed?

A. Cashed probably by myself.

Q. And were you present at the time?

A. Oh, yes, always whenever she went out; she never went alone.

Q. Did you see the currency turned over to Dr. Lee?  
A. Yes, definitely. [330]

\* \* \*

Q. And what was done with those checks after they were drawn?

A. They were cashed at the bank and put in an envelope and taken to Dr. Lee on October 17th.

Q. And did you have——

The Court: The proceeds were placed in an envelope?

A. Yes, we always carried the currency in an envelope, and put it in a purse and handed it to him.

Q. (By Mr. Lockley): At any time during the

(Testimony of Ila High.)

course of the treatment that Mrs. Cavell was taking from Dr. Lee, did he have any conversation with her relating to a more expensive series of treatments?

A. Yes.

Q. Do you remember when the first such conversation took place?      A. September the 26th.

Q. And how do you relate that date?

A. I made a notation of it.

Q. And on what type of record?

A. In the back of what we call a Day Book. On our right sheet each of that book is our cash; on the left side is our daily entry. I didn't make it there, but we turned to the very back of the book and put it on the very last page of [337] our 1950 daily book.

Q. Was it your practice to make such memorandum notations in your books?

A. Yes. Mrs. Cavell kept all the stock items on the back of some of those books, too. If a broker called for, say, stocks or bonds, he had to sell, we made a notation in the back.

Q. And have you brought the appropriate day book page with you?      A. Yes, I have. [338]

\* \* \*

Q. (By Mr. Lockley): Can you recall the substance of the conversation?

A. Well, it still related to the herb which Dr. Lee had to sell which was very expensive. It took a long time to grow in China; that is why it was expensive, he told us, and to help her and speed her

(Testimony of Ila High.)

recovery and probably guarantee that she would live twenty years. He could give her a super formula of this, and that is the gist of it. In other words, he could help her, or guarantee she would live a long time.

Q. Did he guarantee any specific period of time?

A. Twenty years.

Q. He guaranteed that she could live for 20 years. Were any notes made during the course of that conversation? [339]

A. Yes. Mrs. Cavell wrote them on a little white piece of paper, and she herself took it back to the office, it is her handwriting right in the back of the book, copying that. And I saved the piece that she copied it off of and fastened it to that sheet.

Q. First then, there was a little piece of white paper? A. Yes.

Q. On which she made notes during the course of the conversation?

A. During the course of the conversation.

Q. And then she transcribed the substance of those notes to a more permanent record?

A. The back of this 1950, what we call our daily cash book.

Mr. Pierce: It will be understood, so I won't be constantly interjecting to make objections, that my same objection goes to this entire conversation?

The Court: Overruled.

Q. (By Mr. Lockley): I show you Exhibit No. 32 for Identification and ask you if you can identify that document? A. Yes.

(Testimony of Ila High.)

Q. And what is it?

A. It is a notation of the payments that Dr. Lee would receive providing we—Mrs. Cavell accepted his offer or his—what would you say—treatments of this super herbs that were expensive to help her to live and keep her in [340] good health. [341]

\* \* \*

Q. Now if you examine Exhibit No. 32, does that refresh your recollection as to the full contents of the conversation that you had with Dr. Lee?

A. Yes.

Q. Well, now, without testifying then from what this document says, will you go through it, and as you read each portion to yourself will you testify from your recollection as it is refreshed as to what was said?

A. Well, he gave—he gave different proportions he could use. He gave a half and half; he gave two-thirds and one-third; he had what he called an external fluid and an internal fluid. He gave also a synthetic. He said he had a synthetic one he could use, which was around \$75,000, and in giving this it depended upon how much of that herb he used, how fine she would feel and how long she would live. And he also gave different ways that she could pay it. We were given three different ways to take care of it, or three different—what did I say—prices, I guess would be the word.

Q. And what was that conversation concerning the method of payment and the amount of payment?



(Testimony of Ila High.)

A. Yes, the last one he gave was to be paid 15,000 one year; that would be 1950; 15——

Q. Let's confine ourselves first to your first conversation [347] of September 26th.

A. Is it all right if I look at this?

Q. Yes; you go ahead and look at it to refresh your recollection.

A. O.K. O.K. He had what he called the super—I don't know what proportions that was—for 327,500. He had what he called the half and half, and I think the half and half, in my mind, is the internal and the external fluid, for 245,000.

The Court: What do you mean, 245,000? Was that the price? A. Yes, \$245,000.

Q. Price?

A. Yes, price. This is money that we would—Mrs. Cavell would pay Dr. Lee for these treatments or this formula or herb, whatever is the right word. Then he also said that he had another one for 268,500, and it could be made in three payments over a period of five months. He gave her two ways that day—or three ways, I guess you would say, we could do it. Now Mrs. Cavell has written down here—in other words, a third of \$268,500 that he wanted to be made in three payments, she has down \$89,500. I guess that multiplied by three would give that; I haven't done it. She has here a third—a lot of this is just—a third of 245,000—evidently he might have mentioned it could be made—she [348] has written in underneath there and copied it better—it could be made in three payments—or every five

(Testimony of Ila High.)

months, gives 89,500, and along with that, instead of paying the hundred a week, she would pay \$50 a week or \$35 a week she might make it. We was still to keep paying by the week as well as this large sum for this formula.

Then on October 10th when we went back, we were to keep paying the hundred dollars a week; we were to pay \$15,000 in 1950. That would take in the external Fluid double strength and internal fluid a quarter; then in 1951 pay 15,000; in 1952 he give us a figure of—this 268,500, but he was to charge 18,000 more for what he called a fluid mix. The full total that time would be 286,500. If we took the 30,000 off—that would be the 15,000 she would pay in 1950 and the 15,000 she would pay in 1951, why, then at that time in 1952 we would owe a balance of \$256,500. In other words, we could pay it in three years. That was for what he called the super, triple strength.

Q. Were there any other conversations with him relating to the taking of medicine after the October 10th date?

A. No. We went back on the 17th and Mrs. Cavell told him—we took with us the same payments, the hundred which you just read a while ago and the 1100, and she told him she would think it over but she didn't think she would accept; that if she ever should, she would let him know. It [349] was never accepted.

Q. Now going back to the date of October 3rd



(Testimony of Ila High.)

when Mr. Phelps was present—— A. Yes.

Q. ——can you recall the conversation that took place in Mr. Phelps' presence?

A. Well, not the exact words, but it was that he recommended Dr. Lee. He told us how much Dr. Lee had helped him, how he didn't believe that he would be alive if it hadn't been for Dr. Lee, and he told us it is very expensive but it is worth it because, he said, "I feel he has saved my life." And he gave us—of course, I don't remember the exact figures, but they were fabulous at the time to hear what he had paid him—or he didn't give exact figures but we got the impression——

Mr. Pierce: I am going to object—is this conversation in the presence of——

A. Of Mrs. Cavell, myself, Dr. Lee and C. Phelps.

The Court: What was the date, approximately?

A. October the 3rd. The reason I know, Judge Harris, I have it written here in pencil in my book, or I wouldn't know.

The Court: Very well.

Q. (By Mr. Lockley): You don't recall at the present time how much money Mr. Phelps said he had paid Dr. Lee? [350]

A. No, but I just have it in my mind between 80 and 125 thousand, but I wouldn't want to say for sure. I just came away with a fabulous sum in my mind. I don't know that Dr. Phelps told us or Dr. Lee.

Q. Subsequent to the time you ceased going to

(Testimony of Ila High.)

see Dr. Lee with Mrs. Cavell, did you ever have any other meeting with Dr. Lee?

A. He appeared in the office on March the 19th, 1954.

Q. And where was that?

A. In Grace Cavell's office at the Hotel Cavell, Modesto.

Q. And was anyone with him?

A. No one in the office with him.

Q. Who else was present besides the doctor?

A. He came in to see Mrs. Cavell; I had gone home, it was after office hours, and Mrs. Cavell called me at home and I went back in again—I lived four miles out in the country and I went back in again and the three of us talked in her office.

Q. Now what was the substance of that conversation?

A. Well, Dr. Lee wanted to see our records which we had shown to the Federal Agent, Mr. Kerdus, which I let him see and he copied. That is this book right here. And he wanted Mrs. Cavell to say that we had seen him hand this cash to another person.

Mr. Pierce: If the Court please, may we have the [351] conversation instead of characterizations? I realize it is very difficult for the witness to distinguish between the two.

The Court: Yes; give the substance of the conversation as to what the doctor asked you, if he asked you anything, what you represented or said to him, and what Mrs. Cavell said.

A. Oh, well, that is what I am trying to do.

(Testimony of Ila High.)

The Court: Very well.

A. I guess it's not clear. I was trying to say that he wanted Mrs. Cavell if she were called—if she was called into court to say that she saw—we saw him hand this cash to another person. And Mrs. Cavell told him that she wouldn't lie for him, but that she would say he had helped her and that he had told us that we were paying him this extra cash to hand to a person for these herbs.

Q. (By Mr. Lockley): Did you actually see the defendant hand any money to anyone else?

A. No.

Q. Was there any more conversation on that date that you can recall?

A. You mean relative to payment or something?

Q. Well, of any nature whatsoever.

A. Well, no, only in this way. I can't remember all exact except he wanted, as I say, Mrs. Cavell to say this, and he seemed very perturbed that I had these pencil figures [352] here of that cash. He said, "I wanted you not make that record." And I said, "Well, I wouldn't call that a record in pencil figures. That's for my information." And he got quite perturbed. Before he was through he was crying and told us that he had lied to his attorney and accountant and he knew he would be going to jail on account of that. [353]

\* \* \*

## JOHN FERNANDEZ

called as a witness on behalf of the government;  
sworn.

The Clerk: Please state your name, your address and your occupation to the Court and to the jury.

A. John Fernandez.

The Clerk: F-e-r-n-a-n-d-e-z? A. Yes.

The Clerk: And your address?

A. 3138 Landpark Drive.

The Clerk: That is where?

A. Sacramento.

The Clerk: Your occupation?

A. Building contractor. [409]

## Direct Examination

By Mr. Lockley:

\* \* \*

Q. And where did you meet Mr. Lee for the first time? A. In his office.

Q. And why did you go to see him?

A. I was kind of sick—very sick.

Q. You went to consult him in his office because of your physical condition? A. Yes, sir.

Q. Did he diagnose your physical condition at that time? A. Yes, sir.

Q. What did he do?

A. Well, he took my blood pressure and examined my urine.

Q. Anything else? A. That is about it.

Q. Did he give you any prescription or any prognosis? A. No prescriptions. [411]

\* \* \*

(Testimony of John Fernandez.)

Q. (By Mr. Lockley): How did you know, Mr. Fernandez, what amount of money to take to Dr. Lee?

A. Well, he asked me for a certain amount of money.

Q. How soon before the actual delivery of the money to him [421] did you have a conversation with him with respect to the amount of money you were to deliver?

A. Well, he would ask me, like, say, this afternoon, and I would take it the next day.

Q. You were seeing him daily, is that it?

A. Yes.

Q. Except on week ends? A. Yes.

Q. I show you Exhibit 39 for Identification and ask you if you can identify that document?

The Court: Pardon me, what was the last one? I didn't hear that.

Mr. Lockley: Exhibit 39 for Identification.

The Court: All right.

The Witness: Yes, sir.

Q. (By Mr. Lockley): Are you able to identify that? A. Yes.

Q. What is it? A. A check for \$15,000.

Q. To whom is it drawn?

A. Well, it was drawn to me and I gave him the money.

Q. What did you do with the check after you wrote it?

A. Took it down to the bank and cashed it.

Q. Then what did you do?

(Testimony of John Fernandez.)

A. Took the money to Dr. Lee. [422]

Q. And where did you pay it to him?

A. In his office.

Q. Was anyone else present? A. No, sir.

Q. Did you get any receipt? A. No, sir.

Q. How did you know you were to bring him \$15,000? A. He asked me for \$15,000.

Q. When did he ask you?

A. The day before.

Q. Did he say why he wanted \$15,000?

A. Well, he said he had to get some herbs from China or something, and he had to get the money first before he could get it.

Q. Did you subsequently receive any herbs?

A. Well, all I got was that tea. Always tasted the same to me.

Q. If there was any difference you didn't know it? A. I didn't. [423]

\* \* \*

Q. (By Mr. Lockley): Mr. Fernandez, I show you Exhibit 40, for identification, and ask you if you can identify that document?

A. Yes, sir.

Q. And what does that purport to be?

A. This was drawn to cash. The money was delivered to Dr. Lee.

Q. That is a check? A. Yes, sir.

Q. Who wrote it? A. I did.

Q. Did you also cash it? A. Yes, sir.

Q. And what did you do with the money you



(Testimony of John Fernandez.)

received?           A. Took it to Dr. Lee.

Mr. Lockley: I offer in evidence, your Honor please, Exhibit 40.

The Court: It may be marked in evidence.

(Whereupon Government's Exhibit No. 40 formerly for identification was received in evidence.)

Mr. Lockley: Exhibit 40 is a check, Sacramento, California, dated February 8, 1950. "Pay to the order of Cash \$22,750." Sacramento office of the American Trust Company, [425] signed John Fernandez.

Q. Mr. Fernandez, I show you Exhibit 40 and ask you if you cashed that check yourself?

A. Yes, sir, I did.

Q. And what did you do with the money, the \$27,750 that you received?

A. Took it to Dr. Lee. [426]

\* \* \*

Mr. Lockley: I show you Exhibit 41, for identification, and ask you if you can identify that document.           A. Yes, sir.

Q. And what does that purport to be?

A. A check drawn on the American Trust.

Q. And to whom is it drawn?           A. To me.

Q. Did you write it yourself?

A. Yes, sir. [428]

Q. Did you cash it?           A. Yes, sir.

Q. And what did you do with the money?

A. Took it to Dr. Lee.



(Testimony of John Fernandez.)

Mr. Lockley: I offer in evidence Exhibit 41.

The Court: It may be marked.

(Whereupon Government's Exhibit No. 41  
for identification was received in evidence.)

Mr. Lockley: Exhibit 41 is a check, "Sacramento, California, dated March 14, 1950. Pay to the order of cash, \$22,750, drawn on the American Trust Company, Sacramento office, by John Fernandez."

Q. Did you cash that check yourself, Mr. Fernandez?      A. Yes, sir.

Q. What did you do with that money?

A. I took it to Dr. Lee.

Q. Did the same thing happen at that time?  
Did you count the money yourself?

A. No, sir.

Q. Just Dr. Lee counted it?

A. Yes, sir. [429]

\* \* \*

Q. (By Mr. Lockley): I show you Exhibit 42, Mr. Fernandez, and ask you if you can identify that document?      A. Yes, sir.

Q. And what does that purport to be?

A. For Dr. Lee. Money was cashed at the bank to take to him.

Q. Was that a check drawn by you?

A. Yes, sir.

Q. Did you get money for that at the bank?

A. \$2,000, yes, sir.

Q. What did you do with the money?

(Testimony of John Fernandez.)

A. Took it to Dr. Lee.

Q. You paid it to him?                      A. Yes, sir.

Mr. Lockley: I offer in evidence Exhibit 42.

The Court: So ordered.

(Whereupon Government's Exhibit 42 for identification was received in evidence.)

Mr. Lockley: Exhibit 42 is a check dated April 12, 1950, by John Fernandez, "Pay to the order of cash \$2,000," on the Sacramento office of the American Trust Company.

Q. Do you have any recollection concerning the cashing of [430] that particular check, Mr. Fernandez?                      A. Yes, sir, I have.

Q. What did you do on that occasion?

A. I cashed the check and took it to Dr. Lee.

Q. And why did you pay him that money?

A. Because he asked me for it.

Q. Do you recall any particular denomination of bills that you received at the time?

A. No, sir, I don't.

Q. Do you recall that with respect to any of the checks that I have shown you up to now?

A. No, sir.

Mr. Lockley: May this be marked as government's Exhibit next in order for identification?

The Court: So ordered.

(Whereupon check was marked Government's Exhibit No. 43 for identification.)

Q. (By Mr. Lockley): I will show you Exhibit

(Testimony of John Fernandez.)

43, for identification, and ask you if you can identify that document?      A. Yes, sir.

Q. And what does that purport to be?

A. Well, I cashed that check at the bank and delivered the money to Dr. Lee.

Q. Is that a check in your handwriting?

A. Yes, sir. [431]

Q. Did you cash it?      A. Yes, sir.

Q. Did you take the money to Dr. Lee yourself?

A. Yes, sir.

Q. Did you pay it over to him?

A. Yes, sir.

Mr. Lockley: I offer in evidence Exhibit 43.

The Court: So ordered.

(Whereupon Exhibit No. 43 formerly for identification was received in evidence.)

Mr. Lockley: Exhibit No. 43 is a check dated May 9, 1950, drawn to cash, \$2,000, signed by John Fernandez, Sacramento office of the American Trust Company.

Q. With respect to Exhibit 43, Mr. Fernandez, how did you know to get \$2,000 by that check?

A. Well, he asked me for \$2,000.

Q. Did you have a conversation with him with respect to each one of these checks that I have shown you prior to the time you drew the check?

A. He always told me in order to get this medicine he had to have this medicine in cash in advance.

Q. Did he always tell you how much he needed

(Testimony of John Fernandez.)

in cash?           A. Yes.

Q. Was there any lump sum total that you were to pay him over any particular period of [432] time?

A. Well, he started with a hundred and twenty thousand dollars.

Q. Were there any other figures mentioned?

A. Not that I remember.

Mr. Johnston: Excuse me, I will object as no foundation has been laid.

Q. (By Mr. Lockley): When was that \$120,000 figure mentioned?

The Court: The answer may be stricken. Will you lay a foundation?

Q. (By Mr. Lockley): When was the first \$120,000 figure mentioned?

A. When I first talked to him.

Q. That was back in 1949, then?

A. Yes, sir.

Q. Was anybody else present?           A. No, sir.

Q. Was there any discussion as to what he would do for you for this \$120,000?

A. Well, he said for \$120,000 he could put me 80 per cent normal.

Q. Did he say how?

A. With this medicine. I forgot the name of the medicine. He mentioned the name, but I don't remember.

Mr. Lockley: I offer for identification this document. [433]

The Court: It may be marked.

(Testimony of John Fernandez.)

(Whereupon check referred to above was marked Government's Exhibit No. 44 for identification.)

The Court: Were there any progressive payments indicated, Mr. Lockley? Will you develop that with respect to these payments, whether they were on account of an obligation or currently made. It isn't clear in my mind. Were they part and parcel of a payment made approximating \$120,000?

Q. (By Mr. Lockley): Mr. Fernandez, did you have a total that you were leading up to to pay off by means of these various checks?

A. Well, I never did expect to pay him \$120,000.

Mr. Lockley: Objected to as not responsive, if the Court please.

The Court: Yes, it may go out.

Q. (By Mr. Lockley): Did you have an understanding at any time with Dr. Lee as to the sum total you were to pay him?

A. No. The \$120,000, that is the only thing I remember.

Q. Did you know, was there any reason for the varying amounts which you have mentioned on these checks?

A. The reason for it was in order to get the medicine.

Q. I notice that the first of these checks is a thousand dollars on January 6. A week later, on January 13th, it is \$15,000. On February 8th it is

(Testimony of John Fernandez.)

\$22,750. On March 14th it is \$2,750. On April 12th it is \$2,000, and on May 9th it is [434] \$2,000.

Now, is there any explanation that you know for the fact that those amounts went up the scale from 1,000, 15000, 22,750, and then back down again to \$2,000?      A. No, I don't.

Q. You just were told how much to pay on each occasion?      A. Yes, sir.

Q. Did you ever bargain with Dr. Lee as to the amount you would pay him?      A. No, sir.

The Court: How much medicine did he receive currently as he made these progressive payments?

Q. (By Mr. Lockley): Did you receive any more medicine at the times you made the larger payments of \$15,000 and \$22,750 than when you made the lesser payments of one and two thousand dollars?

A. All I received right along was a cup of herb or tea or whatever you call it.

Q. You received the same amount of tea each day?      A. Yes, sir.

Q. So far as you know, were there any different ingredients in the tea?

A. So far as I know, there wasn't.

Q. I show you Exhibit No. 44——

The Court: Was that tea served in the office or did [435] he take it away with him?

The Witness: Over the week end he gave me a couple of bottles of tea to take at home.

The Court: Otherwise the tea was served in the office?

A. Yes, sir.



(Testimony of John Fernandez.)

The Court: And at the time the tea was served, was a check mark made on a little card? Do you recall that?

A. No, sir.

Q. (By Mr. Lockley): Did you see any records of any sort that were maintained by Dr. Lee?

A. No, sir.

Q. Did you ever receive any bill from him?

A. No, sir.

Q. Any receipt?                      A. No, sir. [436]

\* \* \*

Mr. Johnston: I am going to contend that the defendant never got the money.

The Court: You ask me to make rulings here on abstractions. You ask me to require persons who have been allegedly preyed upon to audit their accounts at a moment's notice. I think the Court is entitled to know whether or not you will admit that the monies came into the doctor's office.

Mr. Johnston: If the Court please, our position is that these alleged cash payments never came into the doctor's office and never touched his hands. [500]

\* \* \*



CHARLES R. PHELPS

called as a witness on behalf of the Government,  
sworn.

The Clerk: Please state your name, your address and your occupation to the Court and to the jury. [530]

A. Charles R. Phelps.

The Clerk: P-h-e-l-p-s?

A. P-h-e-l-p-s.

The Clerk: Your address?

A. 539 Merritt Avenue, Oakland, California.

The Clerk: Your occupation?

A. Occupation, life insurance agent.

Direct Examination

By Mr. Lockley: [531]

\* \* \*

Q. In 1950 how frequently did you see him?

A. I saw him almost every day.

Q. And how often did your wife see him, if you know?

A. Not too often. I would take the medicine home to her, and she wouldn't see him but perhaps once a month, something like that.

Q. And what was the nature of services or medication that he gave you during 1950?

A. Well, I took tea every day—an herb. I drank a cupful every day in his place. I took it there because it was more convenient. I was located downtown and it was easier to go down to his office to

(Testimony of Charles R. Phelps.)

get it than go home to get it. And it tasted better when it was warm, anyway.

Q. He warmed it up for you, did he?

A. Oh, yes, it was warm.

Q. Do you know if the defendant kept any books and records?

A. Do I know that he did?

Q. Yes.

A. No, I know nothing about that.

Q. Did you have any arrangement with him for the payment of these daily visits?

A. My payments to him?

Q. Yes.

A. Yes, I paid him 25.65 each week. [533]

\* \* \*

Q. (By Mr. Lockley): Now, Mr. Phelps, in addition to the checks for \$25.60 did you make any other payments to Dr. Lee during the year 1950?

A. I made a few cash payments to Dr. Lee during 1950.

Q. And for what purpose did you make the cash payments? A. For additional medicines.

Q. What type of medicine, if any, did you receive for the cash payments?

A. Well, it would be difficult for me to describe. Frankly, I know very little about the medicines that I took.

Q. Well, was it apparently, to your knowledge, a different type of medicine than the daily herbage tea you were drinking? A. Yes, it was.

(Testimony of Charles R. Phelps.)

Q. Can you describe the container in which it was kept?

A. Well, it was in little bottles, little one and two ounce bottles with a dropper.

Q. There was a dropper in the bottle?

A. That is right.

Q. How did Dr. Lee prescribe that you take that medicine?

A. So many drops in a glass of water a day, twice a day perhaps.

Q. Do you recall how many bottles you received from the doctor at any one time?

A. Oh, I do not. Perhaps, oh, a dozen bottles at one [538] time. Perhaps only six. I am not sure.

Q. Do you know how much it cost per bottle?

A. I do not. I do not.

Q. Prior to 1950 had you purchased any of those bottles of herbs from Dr. Lee?

A. Prior to the year 1950?

Q. Yes.           A. Yes.

Q. Do you recall when you made the purchase?

A. A number of times.

Mr. Johnston: Objected to, if the Court please, on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

The witness: Perhaps for a number of years prior to 1950.

Q. (By Mr. Lockley): How did you pay for the medicine that you purchased prior to 1950 which was not the daily herb tea?

(Testimony of Charles R. Phelps.)

Mr. Johnston: Same objection, if the Court please.

The Court: What is the purpose of this?

Mr. Lockley: I think this goes to scheme, plan, design and course of conduct.

The Court: Objection overruled.

The Witness: I paid for them in cash.

Q. (By Mr. Lockley): Was there any reason for paying for [539] them by cash?

A. It was the only way I could secure them.

Q. Did you have any conversation with anyone relative to the manner of payment?

A. Dr. Lee asked for cash.

Q. And are you able to fit the approximate date that you had such a conversation?

A. I couldn't say that. But I know that it went on for a number of years prior to 1950. I couldn't fix it by dates, Mr. Lockley, but it went on for a number of years.

Q. And do you have any knowledge of the amount of currency you paid him prior to 1950 for this medicine?

Mr. Johnston: Objected to, if the Court please, on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

The Witness: It was considerable.

Q. (By Mr. Lockley): Well, will you tell us what you mean by considerable?

A. I have no record of it and—I really have no

(Testimony of Charles R. Phelps.)

record of it. Those are some of the things I wish to forget. I suppose it was twenty or thirty thousand dollars. [540]

\* \* \*

Q. Now I show you Exhibit No. 34, Mr. Phelps, which is a check dated October 25th, 1949, and drawn to Dr. C. C. Lee and signed by Mr. Lucas for \$1,500 and ask if you will examine particularly the reverse side bearing the endorsements and ask if you have ever seen that before?

A. Yes, I have seen this check.

Q. And where did you first see it?

A. Dr. Lee gave me this check and asked me if I would cash it for him. Mr. Lucas I had recommended to Dr. Lee. And he said, "You know him and would you mind cashing the check?" And I said, "All right, I will."

Q. And what did you do?

A. I gave it to my secretary. The next time she made a deposit she cashed this check and brought me the money and I gave it to Dr. Lee. [554]

\* \* \*

Q. Have you had any discussion with Dr. Lee concerning your testimony in the event you might be called before the revenue agents?

A. Yes.

Q. And when was that?

A. Well, that was several years ago. It was three or four years ago, I would say, maybe two and a half years ago.

Q. Where was it?

A. In his office.

(Testimony of Charles R. Phelps.)

Q. And who was present?

A. Nobody but Dr. Lee and myself.

Q. Were you a patient of his at that time?

A. I was.

Q. Had you gone there for any special purpose?

A. No. I had gone there for my medicine, my regular medicine, which I took every day.

Q. Would you tell us what the conversation was on that occasion?

A. Well, he told me that the situation—he told me that the Internal Revenue was examining into his affairs and asked [555] if they called on me would I report to them that I had paid so much in check only and no cash. [555A]

\* \* \*

### JOHN H. KERDUS

called as a witness on behalf of the Government; sworn.

The Clerk: Please state your name, your address, and your calling to the Court and to the jury.

A. John H. Kerdus—K-e-r-d-u-s. I am a special agent of the Internal Revenue service stationed at Sacramento, California.

### Direct Examination

By Mr. Lockley: [579]

\* \* \*

Q. Now, did you ever see any of the books and records of Dr. Lee?      A. I did not.



(Testimony of John H. Kerdus.)

Q. And how did you go about conducting your investigation?

A. We called upon various offices in the Sacramento area, that is, county offices, city offices, state offices and some federal offices, looking for information as to the Doctor's background, his business, property he had acquired; particularly in the recorder's office for information as property which Dr. Lee had acquired in the year 1950, and of course during the investigation for other years also.

Q. Did you attempt to ascertain who were Dr. Lee's clients or patients?

A. Yes.

Q. And how did you go about that?

A. Inasmuch as the books and records were not available, we worked mainly through the banks in Sacramento. We went to the various banks and asked for information as to whether or not Dr. Lee and his family had accounts there.

When we had found the accounts, we transcribed the accounts, the savings account, commercial accounts, and from these transcripts then we went to the deposit tag showing [581] the makeup of the deposits to the accounts, that is, currency or coin or checks.

Now, from that information we could determine—Well, first of all, a deposit tag shows in most instances, anyway, the identifying number of the bank upon which it is drawn. From that number we were able to determine the name of the bank upon which the check was drawn.

(Testimony of John H. Kerdus.)

Now, in the bank records the out-of-town checks are Recordaked before they are sent back to the bank upon which the check is drawn. Therefore, on all out-of-town items we could try and determine the name of the person who had drawn the check by going to the Recordak film, running the film, and finally in most instances for those checks that we looked for we were able to find an actual picture of the check which had been deposited.

After we had obtained the name, we either went to the bank upon which it was drawn to find out the identity of the person who had drawn the check, or we went to the city directory or telephone directory to find the address of the person. And from that information then we went to the person and talked to them and found out the stories. [582]

\* \* \*

Q. So far as you know, were the amounts of deductions on the income tax return substantially correct as discovered by your investigation?

A. So far as we could tell, yes, sir. [584]

\* \* \*

AUGUSTUS V. BRADY

called as a witness on behalf of the Government,  
sworn:

The Clerk: Please state your name and your calling to the Court and jury.

A. Augustus V. Brady, B-r-a-d-y. I am a Technical Advisor to the Regional Counsel, Treasury Department.

(Testimony of Augustus V. Brady.)

Direct Examination

By Mr. Lockley:

Q. Mr. Brady, what are your duties as Technical Advisor to the Regional Counsel, Treasury Department?

A. As a Technical Advisor to the Regional Counsel's office I assist the Attorneys in reviewing cases recommended by the Special Agents offices for criminal prosecution.

Q. And do you make computations of income tax?      A. Yes, sir, I do, when requested.

Q. What is the extent of your education?

A. Well, going back many years before the First World War, I was in the New York University for a while. Then I went in the Navy. When I came out of the service I took all the correspondence course that the Bureau had offered in regard to accounting through cost accounting. I took approximately six years of accounting at either night school or by correspondence through cost accounting.

Q. Do you have an accountant's license?

A. Public accountant's license, yes. [586]

Q. Have you ever qualified as an expert witness in any income tax cases?      A. Yes, I have.

Q. In about how many cases?

A. Well, I have testified in approximately I would say, more than 15 cases for the past seven years.

Q. In what courts?

(Testimony of Augustus V. Brady.)

A. In the United States Federal Court here in San Francisco and Nevada.

Q. You have been present through the course of the trial to this date?

A. Yes, sir, I have.

Q. And have you examined all of the documents which have been admitted in evidence?

A. I have reviewed them at one time or another, yes.

Q. And have you also besides hearing the testimony have you seen it in its transcribed form in the record?

A. Yes, sir. I have read the testimony each evening, each morning, the previous day's testimony.

Q. Now as a result of that, have you made a computation of the net income received by Dr. Carl C. Lee during the year 1950?

A. Mr. Lockley, I made a computation which I considered a computation of net income based on a summary of receipts from the testimony and exhibits in evidence. [587]

Q. And have you allowed any business expenses for cost of goods sold or other expenses against net income?

A. Yes, what was claimed on the return we allowed.

Q. And how did you determine the amount of deductions of a personal nature for contributions, interest, taxes and so forth?

A. Well, the standard deduction was claimed on a return and we allowed the same amount.

(Testimony of Augustus V. Brady.)

Q. And how many exemptions have you allowed?

A. There were five exemptions claimed on the return and we allowed the same amount.

Q. In your computation have you made any changes in the figures shown on the income tax return?

A. No. I took the income as shown on the return, the deductions shown on the return, and just added to the business income the difference between the receipts testified to here from exhibits and testimony and receipts as shown on the income tax return.

Q. So your initial change then was in the gross income received?      A. Yes, sir.

Q. And you have allowed all of the deductions, exemptions, credits claimed on the original income tax return of the defendant for 1950?

A. Yes, sir, I have. [588]

Mr. Johnston: If the Court please, I am going to make this objection but apparently counsel is asking a hypothetical question of the witness but he has not stated the assumption on which the question is based. I think it should be handled in the customary manner.

Mr. Lockley: I haven't gotten to that point yet, your Honor.

The Court: That is your computation?

The Witness: My summary.

Mr. Lockley: May these computations be marked for identification, your Honor?

The Court: So ordered, they may be marked.



(Testimony of Augustus V. Brady.)

(Whereupon, the computations referred to above were marked as Government's Exhibit 52 for identification.)

Mr. Lockley: With your Honor's permission I would like to place some of these figures on the blackboard as the witness testifies to them.

The Clerk: United States Exhibit No. 52 for identification.

Mr. Johnston: May we see that?

Q. (By Mr. Lockley): Have you made a computation then of the receipts, total receipts from the business or profession received by Dr. Lee during the year 1950?

Mr. Johnston: I will object to it if the Court please as that calls for hearsay testimony. The man has no knowledge [589] of the receipts that Dr. Lee had in 1950.

Mr. Lockley: I am merely asking him a preliminary question which may be answered yes or no.

The Court: He may answer that.

The Witness: Yes I have.

Q. (By Mr. Lockley): And from what source did you obtain the information for making that computation?

A. I made a summary of receipts from the testimony and exhibits here in evidence.

Q. And can you give me a breakdown of the manner in which you arrived at the total figure of gross receipts from business or profession for the



(Testimony of Augustus V. Brady.)

year 1950?           A. Yes, I can.

Q. Will you give them to me briefly?

A. I have a total cash receipts of \$80,000.

Mr. Johnston: I am going to object, your Honor that this again is hearsay testimony. I have no question about Mr. Brady's qualifications and I assume that all he has done is total up a list of figures here and it is purely a mathematical computation, why, I have no objection to stating the total.

The Court: I assume it purports to be a summary or summation?

The Witness: Yes, sir.

The Court: Very well, I will allow it. [590]

Q. (By Mr. Lockley): What is the total figure of cash receipts?

A. I have \$80,333 and no cents.

The Court: Three hundred thirty-three? Three hundred thirty, three hundred thirty?

A. Yes. Amounts received by checks \$10,293.35, making a total receipts from 11 patients of \$90,-623.35.

Q. (By Mr. Lockley): Now I show you Exhibit No. 1, Mr. Brady, and ask if you have examined this before?

The Court: Pardon me, you said 11 patients?

The Witness: Eleven patients, yes, your Honor.

Q. (By Mr. Lockley): Have you examined Exhibit No. 1, the income tax return of the Defendant for the year 1950?           A. Yes, sir.

Q. And what is the amount of gross receipts from income of profession reported on that?

(Testimony of Augustus V. Brady.)

A. \$15,887.75.

Q. You made that calculation of the difference between the amount reported?

A. Yes, I did. The difference is \$74,735.60.

Q. Now the \$90,623.35, how did you characterize that, Mr. Brady?

A. Well, that is a summary of the receipts for the year 1950 from the 11 patients who testified here and also Mrs. High who testified for Mrs. Corvell. [591]

Q. That would be gross receipts?

A. That is gross receipts, yes.

Q. Now what did you allow in the nature of deduction, credits, and exemptions against that figure?

A. Well, the cost of goods sold as shown on the income tax return is \$2,003.31. That I did not disturb.

Q. There was also other business deductions of \$2,957.35?

Mr. Johnston: If the Court please, may it be understood that our objection based on hearsay goes to this entire line of testimony. The objection that we make is based on the theory that these figures, once that they are stated authoritatively as if they were stated as a fact are stated as an independent exhibit in existence, which I think is unfair.

The Court: All of this testimony as I gather it and view it is predicated upon either testimony of-

(Testimony of Augustus V. Brady.)

ferred in this court or written records including the return of the credit, is that correct?

The Witness: Yes, your Honor.

Mr. Lockley: I have no objection if your Honor cares to do so to give the jury the instruction at this time concerning the weight to be given to the testimony of an expert.

Mr. Johnston: If the Court please, this testimony is purely hypothetical and there has not been a single hypothetical [592] question asked or a single assumption stated as such.

The Court: Thus far the testimony has been predicated upon the record, hasn't it?

Mr. Lockley: That is correct.

The Court: From the Government's theory?

Mr. Lockley: That is correct.

The Court: The objection is overruled.

Q. (By Mr. Lockley): What are the total amounts of business deductions and other deductions, which are stated on the income tax return, to arrive at the net income, Mr. Brady?

A. Yes, sir.

Q. What are they?

A. Well, I mentioned the cost of goods sold as \$2,003.31 and other business deductions of \$2,-957.35.

Q. And what is the net income figure that you arrived at from this fact?

Mr. Johnston: If the Court please, I will try not to interrupt again but may the record also show

(Testimony of Augustus V. Brady.)

that our objection is based upon the ground that this is opinion testimony?

The Court: Overruled.

The Witness: While deducting the cost of goods sold as claimed on the return and other business deductions claimed on the return I arrived at a business income of \$85,662.69.

Q. (By Mr. Lockley): And then did you allow the personal deductions against that figure, against the gross income [593] figure?

A. Yes. The standard deduction of \$1,000 as was claimed on the return.

Q. And what is the amount of net income?

A. The net income is \$84,662.69.

Q. Now assuming, Mr. Brady, that Dr. Lee reported the amount of his deductions, exemptions and credits correctly on his income tax return, that is of both a personal and business nature, and that he had a net income of \$84,662.69, have you computed the amount of tax that would be owing upon that net income?

A. Yes, sir, I have.

Q. And what is that amount of tax?

A. Well, the total tax liability in a joint return basis would be \$36,938.80.

Q. And what is the amount of tax reported on Exhibit 1 the income tax return?

A. \$1,282.

Mr. Lockley: That's all.

Mr. Johnston: No cross-examination.

The Court: Do you have any cross-examination?

Mr. Johnston: No cross-examination, your Honor.

The Court: Very well.

Mr. Lockley: The Government rests at this time.

The Court: Has the summary been offered in evidence? [594]

Mr. Lockley: Your Honor, I have not offered it in evidence. I will do so if counsel cares me to do so, but I have just had it marked for identification at this time.

Mr. Johnston: I am not going to offer it. I am objecting to it. You offer it, Mr. Lockley.

Mr. Lockley: I am not going to offer it.

The Court: Very well.

Do not erase the board, please.

Ladies and gentlemen, we have reached the adjournment hour. This being Friday the Court will take the regular adjournment until Monday morning at 10:00 o'clock. The same admonition not to discuss the case nor form nor express an opinion until the matter is submitted and not to read news accounts, if there be any news accounts, of this trial.

The Defense Counsel on Monday will make his opening statement and go forward with the defense.

(Thereupon, an adjournment was taken until Monday morning at 10:00 o'clock.) [595]

Monday, December 12, 1955—10:00 A.M.

The Clerk: United States of America vs. Carl C. Lee, further trial.

The Court: Do you have some matters you desire to take up with the Court outside the presence of the jury?



Mr. Johnston: Yes, your Honor.

The Court: All right.

(The following proceedings were had outside the presence of the jury:)

Mr. Johnston: The Court will recall that we had pending a motion to dismiss the indictment, and I think it might be appropriate for the Court to rule on that motion at the present time. I have nothing further to offer in support of the motion.

The Court: The motion will be denied.

Mr. Johnston: At this time, if your Honor please, I would like to make a motion for judgment of acquittal, and I will not argue the motion, unless the Court desires to hear argument.

The Court: There is no occasion, unless you desire to submit authorities or to give whatever views you may have on the question, or any supporting statements.

Mr. Johnston: No, I do not, your Honor.

The Court: The motion is denied.

Mr. Johnston: I would like also at this time to make [597] a motion to strike that portion of the witness Brady's testimony beginning in the transcript at page 590, line 15, continuing to page 594, line 18, on the ground that the testimony is hearsay; and on the further ground that it is opinion testimony which was not prefaced by the proper type of hypothetical question.

The Court: Mr. Lockley?

Mr. Lockley: Your Honor please, I think that does not call for an opinion so much as it calls



merely for a mathematical computation. That is all that the witness Brady did. I don't think that that enters the realm of expert testimony to such an extent that it is necessary to lay the ordinary foundation by asking hypothetical questions.

The witness Brady testified that he had determined these computations, which were merely additions of figures, from all of the testimony and documents which are in existence here.

The jury could, of course, have arrived at the very same results themselves by examination of the documents, and the sole purpose of Mr. Brady's testimony, which does not in any way encroach upon the province of the jury, was to more or less assist the jury in what would otherwise have been a somewhat practically difficult matter; that is, segregating from these rather voluminous checks the ones which related to payments to Dr. Lee in currency and ones that related to payments by check to him, and then totaling up the [598] additions.

The Court: The motion to strike is denied. Are there any other motions or matters before the Court at the present time? [599]

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The Clerk: United States of America v. Carl C. Lee, further trial.

The Court: Is it stipulated that the jurors are present, gentlemen, including the alternate juror?

Mr. Lockley: So stipulated.

Mr. Johnston: So stipulated, your Honor.

The Court: Under the rules the alternate juror

is to be discharged at the time or immediately prior to the time the jury retires for its deliberations. Therefore, the alternate juror will remain during the instructions of the Court and until the exceptions, if any, are taken, and then I will excuse the alternate juror, it appearing that all the other jurors are present, so there are thirteen in the box.

May that be stipulated, too, gentlemen?

Mr. Lockley: Yes, your Honor.

Mr. Johnston: Yes, your Honor.

### INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen, we have arrived at that period in the trial wherein the Court, under the law, instructs you with respect to the legal principles involved in this case.

I might say a word in a preliminary sense concerning the instructions. Many of you ladies and gentlemen are trying your first case, and it is a criminal case. The instructions given to you by the Court represent the embodiment of instructions proffered and tendered by the government as well as by [2\*] the defendant to their counsel, and the instructions are processed by the Court as well as by the attorneys. The attorneys are officers of this court. And after processing and refinement, the results are given to you as a sort of distillate, the result of sometimes many hours of work.

You are bound to accept my statements of the law. If any principles I announce to you are in-

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

correct, there are higher courts that are duty-bound to exercise supervision over this Court. We have in our system or jurisprudence a very evenly balanced system of checks and balances.

The Court told you at the very threshold of the case that you are the triers of the facts. The Court does not intrude itself in the duties that are cast upon you. If during the trial of this case I said anything, either expressly or inferentially, that seemed to reflect upon any of the parties to this action, I ask you to dismiss the same from your minds. I do not intend to convey to you my impression as to the facts. That is exclusively your province. I attempt in the trial of cases to remain within my exclusive province, and that is to announce to you the law and to rule upon the admissibility of evidence during the course of the trial.

You are to be governed solely by the evidence introduced in the case. And the law will not permit jurors to be governed by sentiment, conjecture, sympathy, passion or prejudice. A verdict founded upon sentiments of pity for the accused, or [3] upon public opinion or public feeling, or upon passion or prejudice, or upon conjecture or suspicion or surmise will be a false verdict.

You should keep in mind the importance to the accused of the result of your deliberations, and be just to him as well as to the people of the United States. Both the public and the defendant have a right to demand and they do demand and expect that you will carefully and dispassionately weigh and consider the evidence and the law of the case

and give each your conscientious judgment, and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The Court has not attempted to embody all the law applicable to the case in any one instruction, but in considering any instruction you must construe it in the light of and in harmony with every other instruction given; and so considering and construing, apply the principles enunciated to all the evidence admitted upon the trial.

I ask you to distinguish carefully between the facts testified to by the witnesses and statements made by the attorneys in their arguments, or representations as to what facts have been or are to be proved; and if there is a variance between the two, you must, in arriving at your verdict, to the extent that there is such variance, consider only the facts testified to by the witnesses. And you are to remember that [4] statements of counsel in their arguments or representations are not evidence in the case.

You may recall that at the opening statements of the arguments I admonished and directed you to weigh the arguments in the light of the evidence. If counsel upon either side have made any statements in your presence concerning the facts in the case, you must be careful not to regard such statements as evidence, and you must look entirely to the proof in ascertaining what the facts are.

On the other hand, if counsel have stipulated or agreed to certain facts, you are to regard the facts

so stipulated and agreed to by counsel as being constructively proved.

You may recall in several instances wherein counsel on both sides agreed and stipulated to certain arithmetic computations to be considered as evidence, and the Court and clerk made certain notations in the records and minutes of this court.

Any testimony to which an objection was sustained by the Court, and any testimony which was ordered stricken out by me, must be wholly left out of account and disregarded by the jury.

At times throughout the trial the Court has been called upon to pass upon the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is [5] admissible is purely a question of law. In admitting evidence to which an objection has been made, the Court does not determine what weight should be given such evidence, nor does it pass upon the credibility of the witnesses.

I charge you, ladies and gentlemen, that if the evidence in this case is susceptible of two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant and the other to his innocence, it is your duty under the law to adopt the interpretation which will admit of the defendant's innocence and reject that which points to his guilt.

The fact that an indictment has been filed against the defendant is not to be considered by you as any



evidence of the defendant's guilt. You may recall at the time when I examined you as to your qualifications to serve as a juror, I undertook to point out that the indictment is not evidence. It is merely a legal accusation and the initiatory step in the trial of a criminal case.

The defendant, as you know, entered a plea of not guilty and therefore placed in issue all of the material allegations of the indictment, which is embraced in one count.

The indictment in this case charges a violation of Section 145(b) of Title 26, United States Code, which, so far as applicable here, reads, "Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this [6] chapter shall be guilty of an offense."

The word "wilful" as used in this statute means with knowledge of one's obligation to pay a tax due and with intent to defraud the government of that tax.

It is not necessary for the government to prove that the defendant received income in the exact amount stated in the indictment or that the taxes due on his income were exactly as stated in the indictment. It is sufficient if you find beyond a reasonable doubt that the defendant received a substantial part of the income which he is charged with receiving, and that he wilfully attempted to evade and defeat a substantial portion of the taxes alleged to have been due in the indictment.

The determination of a charge in a criminal case involves the proof of two distinct propositions:



first, that the crime charged was committed; second, that it was committed by the person accused thereof and on trial therefor. These two propositions, and every essential and material fact necessary to them, or either of them, must be established by the government beyond a reasonable doubt.

Counsel on both sides have addressed themselves to a consideration of the context of the returns filed. You as citizens, the Court as well, must at the allotted time every year return our taxes to the government, and I take it that you are all generally familiar with the forms as well as the makeup of the routine forms provided by the government. Much of [7] what I say to you now will be already within your contemplation and knowledge.

However, the first stage in arriving at the income of an individual upon which the tax is imposed, is a determination of the gross income of the individual.

Gross income is generally all gains or profits and income derived from any source whatever, whether from salary or wages, or professions, trades and businesses; from sales, from dividends, from interest, or from the transactions of any business carried on for gain or profit, except that from such gains and profits there must be excluded, under the provisions of the Revenue Acts, certain items which would properly be a part of gross income if the statute did not require their exclusion. These items are not pertinent in this particular case.

In the case of a merchandising business, gross

income means the total sales less the cost of goods sold. After having determined the gross income of an individual, the next step provided by the statute for arriving at the income upon which the tax is computed is to deduct from the so-called gross income such deduction as the statutes permit.

That is, an individual is permitted to deduct from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on his trade or business, including a reasonable allowance for salaries or other [8] compensation for personal services actually rendered such individual; also rentals for the use and possession of property connected with and used in a trade or business; also certain taxes paid by the individual in the taxable year; also losses sustained during the year for which the individual is not reimbursed by insurance, if such losses are incurred in the trade or business; other losses sustained during the year for which the individual is not reimbursed by insurance if said losses are incurred in any transaction entered into for profit, although not connected with any trade or business, and other deductions.

After such of these deductions from gross income as the individual is entitled to are made, the amount remaining is the adjusted gross income, to which reference was made during the course of defense arguments.

In determining net income, the taxpayer is permitted to deduct from adjusted gross income either the optional standard deduction fixed by law or the

amounts paid by him during the year for certain charitable contributions, interest, taxes, medical expenses, casualty losses and other miscellaneous personal deductions.

Medical expenses which may be deducted include amounts paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body. The cost of drugs is included in the [9] expenses which are deductible.

In filing his federal income tax return for the year 1950, an individual taxpayer was entitled, but was not required—that is, it was permissive—to claim a deduction for his medical expenses not compensated by insurance or otherwise, subject to the following limitations:

1. Such expenses were deductible only to the extent that they exceeded five per cent of the taxpayer's adjusted gross income.

2. The deduction could not exceed \$1,250, multiplied by the number of exceptions allowed to the taxpayer for himself, his spouse and dependents.

3. The maximum deduction in the case of a taxpayer filing a separate return was \$2,500.

4. The maximum deduction in the case of a husband and wife filing a joint return was \$5,000.

I charge you, ladies and gentlemen, that if you find that the defendant signed his individual income tax return, you may consider that as a circumstance in determining whether he had knowledge of the contents of that return.

The defendant is presumed to be innocent of the

crime charged against him. This presumption of innocence attaches at the beginning of the trial. It has the weight and effect of evidence in the defendant's behalf, and continues to operate in the defendant's favor throughout all stages of the [10] trial. When you finally retire to the jury room to deliberate upon a verdict, it becomes your duty to consider the evidence introduced in this case in the light of this presumption. This presumption is sufficient to acquit any defendant charged with a crime unless it is overcome by evidence that satisfies your mind beyond a reasonable doubt of the guilt of the accused, and unless you are so satisfied it is your duty to find the defendant not guilty.

It is not necessary for the defendant to prove his innocence. The burden rests upon the prosecution to establish every element of crime with which a defendant charged, beyond a reasonable doubt.

Now, what is a reasonable doubt?

A reasonable doubt is what the term implies, a doubt founded upon reason. It means a doubt which is substantial and not merely shadowy. It does not mean a doubt which is merely capricious or speculative. Neither does it mean a doubt born of reluctance on the part of a juror to perform an unpleasant duty, nor a doubt arising out of sympathy for a defendant, or out of anything other than a candid consideration of all the evidence presented. It means a doubt which arises upon an impartial comparison and consideration of the evidence.

Without it being restated or repeated to you, ladies and gentlemen, you are to understand that

the requirement that a defendant's guilt be shown beyond a reasonable doubt is to [11] be considered in connection with and as accompanying all the instructions that are given to you. Remember that the defendant is entitled to any reasonable doubt as defined that you may have in your minds. But at the same time, also remember that if you have no such doubt, the government is entitled to a verdict.

The government must establish the guilt of a defendant beyond a reasonable doubt, as I have indicated. Proof of guilt should exclude every reasonable hypothesis of innocence, but need not go beyond that point. That is to say, the government must prove its case beyond a reasonable doubt, but the government is not required to exclude every possible hypothesis of innocence.

The reasonable doubt to which I refer, such as would entitle the defendant to an acquittal, need not necessarily arise out of or from the evidence itself, but may result or arise from a want or a lack of evidence sufficient to satisfy the mind.

To establish its case, the government must prove beyond a reasonable doubt both of the following two elements:

1. That substantial income tax was due and owing from the defendant in addition to that declared in his income tax return; and,

Second, that the defendant wilfully attempted to evade and defeat such tax. [12]

The gist of the offense charged in the indictment is a wilful attempt on the part of the taxpayer to evade or defeat the tax imposed by the income tax



law. The word "attempt," as used in this law, involves two things:

1. An intent to evade or defeat the tax, and,

Second, some act done in furtherance of such intent.

The word "attempt" contemplates that the defendant had knowledge and understanding that during the calendar year 1950 he had an income in such year which was taxable, and which he was required by law to report, and that he attempted to evade or defeat the tax thereon, or a portion thereof, by purposely failing to report all the income which he knew he had during such calendar year and which he knew it was his duty to state in his return for such year.

There are various schemes, subterfuges and devices that may be resorted to to evade or defeat the tax. The one alleged in this indictment is that of filing a false and fraudulent return with the intent to defeat the tax or liability. The gist of the crime consists in wilfully attempting to escape the tax.

The attempt to evade and defeat the tax must be a wilful attempt; that is to say, it must be made with the intent to keep from the government a tax imposed by the income tax laws which it was the duty of the defendant to pay to the government. The attempt must be wilful, that is, intentionally [13] done with the intent that the government should be defrauded of the income tax due from the defendant at bar.



If you find, ladies and gentlemen, that a fraudulent return was filed with intent to defeat a part or all of the tax, and that this was done wilfully, the crime is complete as soon as the filing takes place.

Before the defendant in this case can be found guilty of the alleged charge set forth in the indictment, it must be established by the evidence beyond a reasonable doubt that the defendant had the specific intent to commit the acts therein alleged.

If, in your judgment as jurors, the prosecution fails to prove such specific intent beyond a reasonable doubt, or if after considering all of the evidence, you or any of you entertain a reasonable doubt as to whether the defendant had such specific intent, then you must return a verdict finding the defendant not guilty.

The gist of the offense is an act done with a fraudulent purpose. An honest error, whether due to incompetence of bookkeepers or to carelessness or ignorance on the part of the defendant or to some other cause would not support a finding of wilfulness. Good faith is a complete defense to the charge alleged in the indictment.

The question of intent is a matter for you, as jurors, to determine and, as intent is a state of mind and it is not [14] possible to look into a man's mind to see what went on, the only way you have of arriving at the intent of the defendant in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and

circumstances what the intent of the defendant was at the time in question. Thus, direct proof of wilful or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inferences may arise from a combination of acts, although each act standing by itself may seem unimportant. These are questions of fact to be determined from all the circumstances.

Further, in determining what the defendant's intent was, ladies and gentlemen, you may take into consideration any evidence you find of the concealment, if there be concealment, of fact by the defendant.

Further, on the question of intent to evade income taxes, there are certain matters which you may consider as pointing to such intent, if you find that they exist in this case.

These are general illustrations: Making false entries in the books, altering invoices, destruction of books, concealment of assets, covering up sources of income, handling one's affairs to avoid the making of usual records, and any conduct the likelihood of which would be to mislead or conceal.

I give you these instances simply to illustrate the type [15] of conduct from which you may infer intent to evade taxes. And if the tax evasion motive plays any part in such conduct, the offense may be made out even though the conduct I have mentioned might also serve some other purpose or purposes.

You are instructed that it is not necessary for the government to offer direct proof of wilfulness.

It is a rare case in which a defendant has said

to a witness that he did certain acts with the purpose of evading his tax liabilities.

In making your decision, therefore, as to whether or not the acts tending to conceal defendant's true tax liability were wilful, you may consider, as indicated earlier in my instructions, all of the circumstances of the case. You may infer wilfulness from the kind of evasion, if any, which you find the defendant committed; from his opportunity to know the true amount of his net income; and from such other facts which point to the existence or non-existence of the criminal state of mind of the defendant.

Evidence may be classified as direct or circumstantial. With respect to direct evidence, witnesses testify directly of their own knowledge as to the main facts to be proved. With respect to circumstantial evidence, proof is given of facts and circumstances from which the jury may infer other connecting facts which reasonably follow according to the common experience of mankind. Circumstantial evidence shall [16] be accorded treatment similar to that of direct evidence in ascertaining the facts of the case.

I further charge you, ladies and gentlemen, that the possession of money alone is not sufficient to establish net taxable income, but evidence of the possession of money and the expenditure of money may be considered as part of the chain of circumstances which you may consider in arriving at a conclusion as to whether or not the defendant enjoyed taxable income.

If you find that the defendant had substantial taxable income for the year 1950, which he did not report on his income tax return, then you will find that there was a substantial amount of tax due to the United States government for that year by the defendant.

As I have indicated to you, and now more precisely, the jury are the sole judges of the credibility of the witnesses and the weight to which their testimony is entitled. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by other evidence affecting his character for truth, honesty and integrity, or by contradictory evidence.

You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor while on the stand, [17] his intelligence, the relation which he bears to the government or to the defendant, the manner in which he might be affected by the verdict, and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility.

You have heard expert testimony relating to the issues involved in this case. You are not bound by the computations or other testimony of any expert witness, but you should give such testimony the weight to which you determine it is entitled in the light of the other proof in the case, and also with reference to your conclusions as to whether or not

the facts, on which the particular expert's testimony was based, have been established by the necessary degree of proof.

The good character of a person accused of crime, when proven, is itself a fact in the case. It is a circumstance tending in a greater or lesser degree to establish his innocence. It must be considered in connection with all other facts and circumstances of the case, and may be sufficient when so considered in itself to raise a reasonable doubt of the defendant's guilt.

But if after a full consideration of all the evidence adduced, the jury believes the defendant to be guilty of the crime charged, they should so find, notwithstanding proof of good character.

I further charge you, ladies and gentlemen, that if you [18] should find that there are discrepancies or inconsistencies existing in the testimony of any witness, or between the testimony of any witnesses, or if you should find yourselves disagreeing over various issues, real or apparent, you should then ascertain whether or not such discrepancies or inconsistencies or such points affect the true issue in this case.

Examine such discrepancies or inconsistencies and disputed points and ask yourselves this question: How does the decision of this or that or the other discrepancy or matter in dispute affect the guilt or innocence of the defendant?

Regardless of what may be the truth concerning such discrepancies or inconsistencies, ask yourselves the main question: Did or did not the defend-



ant commit the charges as alleged in the indictment? Is such discrepancy or such disputed point material to establish the main and material issue of fact as to the guilt or innocence of the defendant?

If they are not material, if the decision of the same is not necessary to enable you to arrive at the guilt or innocence of the defendant, then such discrepancies or disputed points are immaterial and minor matters, and you should waste no further time in discussing or considering them.

A witness may be impeached, ladies and gentlemen, by the party against whom he is called, by contradictory evidence; by evidence that he or she has made at other times statements [19] inconsistent with his testimony presently.

If you believe that any witness has been impeached, then you will give the testimony of such witness such credibility, if any, as you may think it is entitled to.

A defendant is not required, under the law, to take the witness stand; and if he fails to do so, no inference unfavorable to him should be drawn from that fact, nor is the prosecution permitted in that case to comment unfavorably upon the defendant's silence.

If a witness is shown knowingly to have testified falsely on the trial touching any material matter, that is, any fact which tends to prove or disprove the defendant's guilt or innocence, the jury has a right to distrust such witness' testimony in other



particulars, and in that case you are at liberty to reject the whole of the witness' testimony except insofar as he has been corroborated by other credible evidence or by facts and circumstances proved on the trial.

The indictment in this case contains one count. The indictment was read to you during the early stages of the trial, and I take it there is no occasion to reread it to you at this juncture. Reference has been made to it in several particulars at several junctures of the trial.

Your verdict must be unanimous in arriving at a determination.

I ask you, ladies and gentlemen, not to concern yourselves [20] with the matter of punishment of the defendant in the event of a verdict of guilty. The matter of punishment is for the Court alone. Your province is to determine the guilt or innocence of the defendant.

You are expected to agree upon a verdict where you can conscientiously do so. You are expected to consult with one another in the jury room, and any juror should not hesitate to abandon his or her own view when convinced that it is erroneous.

As I have indicated to you, your verdict must be unanimous; that is, all twelve jurors must agree.

When you retire to the jury room to deliberate, you will select one of your number as foreman or forelady, and he or she will sign your verdict for you when it is agreed upon, and he or she will represent you as your spokesman in the further conduct of the case in this court.

I caution you, ladies and gentlemen, that if it becomes necessary for the jury to communicate with the Court during its deliberations or upon its return to court, respecting any matter connected with the trial of the case, the jury should not indicate to the Court in any manner how the jury stands numerically or otherwise upon the issues submitted to the jury. This caution the jury should observe at all times after the case is submitted to you and until the jury has reached a verdict. [21]

Now, ladies and gentlemen, under the law we are obliged to note any exceptions or objections that counsel may have to the instructions which I have given to you, and if there are any, we will recess to chambers and record any such objections.

I take it counsel have some?

Ladies and gentlemen, the case has not been delivered to you thus far. This is a procedural detail that requires the attention of the Court, and I ask you to remain in the jury box. It will involve only a matter of several minutes.

(Thereupon Court, counsel and court attaches retired to court chambers where the following proceedings were had outside the presence of the jury:)

The Court: May the record show that we have returned to the Court's chambers and counsel and all parties are present?

Mr. Lockley: The government has no exceptions to the instructions, your Honor.

The Court: Very well. Mr. Johnston?

## OBJECTIONS TO INSTRUCTIONS

Mr. Johnston: If the Court please, the defense will except at this time and object to the Court's failure to give the following instructions that were requested by the defense:

The first of the defendant's requested instructions is No. 18, which is on the subject of intent. The Court will recall that the requested instruction was based upon the case of *Block v. United States*, 221 Fed. 2d. 786. [22]

The Court: Very well.

Mr. Johnston: The ground of our objection is that the type of conduct mentioned in that instruction should be excluded from the area of wilfulness or intent as it applies to this alleged offense.

We are taking objection also to the Court's failure to give defendant's requested instruction No. 27, which has reference to lesser included offenses. Our objection there is based upon Section 145(a) of the Internal Revenue Code of 1939, and Rule 31(c) of the Federal Rules of Criminal Procedure.

I think, your Honor, also that the Court, although it commented on circumstantial evidence, did not undertake to define for the jury the difference or distinction between direct and circumstantial evidence, and we would note an objection at this time to the Court's failure to define circumstantial evidence for the jury as set forth in our proposed instructions Nos. 19 and 20.

The defense will also object to the instruction which the Court gave based upon the government's requested instruction No. 9.

The ground of our objection there is that some of the kinds of acts which are stated in that instruction by way of illustration find no support in the evidence in this case. I refer specifically to the reference to making false entries [23] in the books, the altering of invoices, the destruction of books.

Those are the objections that we would make, your Honor.

### FURTHER STATEMENT BY COURT

The Court: You noted your objection to the failure to give defendant's requested instruction No. 27, did you? I think you did.

Mr. Johnston: Yes, your Honor.

The Court: And you also noted No. 18, defendant's requested instruction?

Mr. Johnston: Yes. No. 18, No. 27, and the definition of circumstantial evidence which we have attempted to set forth in No. 19 and No. 20, and also to the giving of government's instruction No. 9.

The Court: Do you have any comment at this time?

Mr. Lockley: No, your Honor, I think it is unnecessary for the government to make any comments.

The Court: All right. Very well. The record now is complete, and we now will excuse the alternate juror.

(Thereupon the Court, counsel and court attaches returned to the courtroom, and the following proceedings were had in the presence of the jury:)

The Court: Ladies and gentlemen, the arguments have been concluded and the Court has instructed you as to the law and the case rests now for your determination. [24]

The alternate juror may now be excused. Mr. Ellis, thank you very much for serving, and we appreciate your interest shown during the course of the trial.

(Thereupon the alternate juror was excused and retired.)

The Court: We now have twelve jurors ready for deliberation. You may now retire, ladies and gentlemen. The exhibits will be made available to you by the clerk, as well as the form of verdict that has been prepared for your convenience.

(Thereupon, at the hour of 10:50 a.m., the jury retired to deliberate upon its verdict.)

\* \* \*

[Endorsed]: Filed February 8, 1956. [25]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below are the originals filed in this Court in the above-

entitled case and that they constitute the record on appeal herein as designated by the attorneys for the Appellant:

Indictment.

Verdict of Jury.

Judgment & Commitment.

Defendant's Instructions Given & Given as Modified.

Defendant's Instructions Refused.

Notice of Appeal.

Designation of Matter to be Included in Record on Appeal.

Bill of Costs.

Objections to Plaintiff's Bill of Costs.

Order Sustaining Allowance of Cost of Transcript.

Notice of Appeal.

Plaintiff's Counter-Designation of Transcript to be Printed on Appeal.

Supplement to Designation of Matter to be Included in Record on Appeal.

Reporters Transcript, eight volumes, Oct. 14th, Dec. 5th, Dec. 6th, Dec. 7th, Dec. 8th, Dec. 9, Dec. 12th, & Dec. 14th.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of February, 1956.

[Seal]

C. W. CALBREATH,  
Clerk,

By /s/ WM. J. FLINN,  
Deputy Clerk.



[Endorsed]: No. 15039. United States Court of Appeals for the Ninth Circuit. Carl C. Lee, Appellant vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: February 20, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit .

No. 15039

CARL C. LEE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

Appellant intends to rely on the following points on appeal:

1. The Court erred in overruling appellant's objections to the testimony of Government witness Augustus V. Brady and in denying appellant's motion to strike a portion of said Brady's testimony, all on the grounds of hearsay, opinion testimony, and that the questions asked of said Brady were not stated in hypothetical form.

2. The Court erred in refusing to give the following instructions requested by appellant:

(a) Requested Instruction No. 18, on the state of mind necessary to supply the intent necessary to warrant conviction.

(b) Requested Instruction No. 27, instructing the jury that it might find appellant guilty of the

lesser offense of wilfully failing to pay his correct income tax for the year 1950.

Dated this 24th day of January, 1956.

FRED PIERCE,

vs J. RICHARD JOHNSTON,

By /s/ J. RICHARD JOHNSTON,  
Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed January 24, 1956.

